

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SEABERY NORTH AMERICA, INC.,
Petitioner,

v.

LINCOLN GLOBAL, INC.,
Patent Owner.

Case IPR2016-01568
Patent 8,747,116 B2

Before THOMAS L. GIANNETTI, JENNIFER S. BISK, and
JESSICA C. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

TERMINATION
Dismissing the Proceeding
37 C.F.R. § 42.5(a), 37 C.F.R. § 42.71(a)

Pursuant to Petitioner's request, the Board authorized Petitioner to file an unopposed motion to dismiss the above-captioned proceeding. On November 10, 2016, Petitioner filed its "Unopposed Motion to Withdraw Petition" (Paper 10).

This case is in the preliminary proceeding stage. A preliminary proceeding begins with the filing of a petition for instituting a trial and ends with a written decision as to whether trial will be instituted. *See* 37 C.F.R. § 42.2. Petitioner filed a Petition on August 9, 2016. Paper 1. Patent Owner filed a Preliminary Response on October 18, 2016. Paper 9. No decision whether to institute a trial has been made.

Petitioner requests that its petition be withdrawn. Paper 10, 2. Specifically, Petitioner asserts that the petition in this proceeding was filed to overcome alleged procedural defects in the petition in IPR2016-00749. *Id.* Because the Board's decision denying institution in IPR2016-00749 "reached the merits," Petitioner seeks to withdraw the petition in this proceeding "to avoid needless duplication of effort by the Board." *Id.* Petitioner represents that Patent Owner does not oppose the motion, and that Petitioner is subject to the one-year time bar under 35 U.S.C. § 315(b). *See id.*

Based on the facts of the case, and in view of Petitioner's unopposed motion, we determine that it is appropriate to dismiss the petition as to both Petitioner and Patent Owner without rendering either a decision to institute or a final written decision. *See* 37 C.F.R. §§ 42.5(a); 42.71(a). Therefore, the unopposed motion to withdraw the petition is *granted*. This paper does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

Accordingly, it is

ORDERED that the unopposed motion to withdraw the petition is *granted*; and

FURTHER ORDERED that the Petition for *Inter Partes* Review of the above-referenced patent is *dismissed*.

IPR2016-01568
Patent 8,747,116 B2

FOR PETITIONER:

Eligio Pimentel
epimentel@mcandrews-ip.com

Gregory Schodde
gschodde@mcandrews-ip.com

Wayne Bradley
wbradley@mcandrews-ip.com

FOR PATENT OWNER:

John R. King
2jrk@knobbe.com

Ted M. Cannon
2tmc@knobbe.com

Bridget Smith
2bzs@knobbe.com

Kevin Dunn
kevin_dunn@lincolnelectric.com