

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VDF FUTURCEUTICALS, INC.,
Petitioner,
v.
HANIF KAZEROONI, BAHRAM NASERNEJAD,
ABBAS ABDOLMALAKI, AND AKBAR ZARE,
Patent Owner.

Case IPR2017-00547
Patent 9,327,025 B2

Before ERICA A. FRANKLIN, ZHENYU YANG, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

JUDGMENT AND FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73(b)5

Petitioner, VDF Futurceuticals, Inc., filed a Petition requesting an *inter partes* review of claims 1–9 of U.S. Patent No. 9,327,025 B2 (Ex. 1001, “the ’025 patent”). Paper 1 (“Pet.”). Patent Owner did not file a Preliminary Response to the Petition.

On April 24, 2017, Patent Owner filed Powers of Attorney (Papers 7, 8) and a Mandatory Notice designating Mr. Barry Choobin as counsel (Paper 5).

On June 15, 2017, we granted the Petition to institute an *inter partes* review as to claims 1–9 of the ’025 patent. Paper 9. Also on June 15, 2017, we issued a Scheduling Order, which set September 6, 2017, as DUE DATE 1, the date by which Patent Owner could file a response to the Petition or a Motion to Amend. Paper 10. Patent Owner did not file a response to the Petition or a Motion to Amend.

Our Scheduling Order also set March 1, 2018, as the date for oral argument,¹ and indicated that a party must request oral argument by DUE DATE 4, set for January 19, 2018. *Id.* Patent Owner did not timely request oral argument. In an abundance of caution, on January 21, 2018, the Board sent an email communication to the parties indicating that either party could contact the Board before the close of business on January 22, 2018, if it had not intended to waive oral argument. Ex. 3001. The parties did not respond.

On January 24, 2018, we issued an Order to show cause why Patent Owner’s failure to file substantive papers during this proceeding should not be considered an abandonment of the contest and why adverse judgement should not be entered. Paper 12. Patent Owner did not respond within the five business days allotted. *See*

¹ The date for oral argument was subsequently moved to February 14, 2018, without response from the parties. Paper 11.

id. at 3. Nor has Patent Owner responded as of the date of this Order.

As of the date of this Order, Patent Owner has not filed any substantive response, requested oral argument, or contacted the Board with an explanation for its failure to participate substantively in this proceeding.

Pursuant to Board rules, “[a]ctions construed to be a request for adverse judgment include . . . [a]bandonment of the contest.” 37 C.F.R. § 42.73(b)(4). Patent Owner did not file a Patent Owner’s Response or a Motion to Amend in this *inter partes* review by the September 6, 2017 deadline set in the Scheduling Order (Paper 10), and did not file a paper in response to the Order to Show Cause by the January 31, 2017 deadline. Under these circumstances, where Patent Owner filed Powers of Attorney (Papers 7, 8) and a Mandatory Notice (Paper 50), but did not file any response to the Order to Show Cause, we determine that Patent Owner’s lack of response is consistent with an abandonment of the contest. Accordingly, we construe such abandonment as a request for adverse judgment.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s request for adverse judgment under 37 C.F.R. § 42.73(b) with respect to claims 1–9 of U.S. Patent No. 9,327,025 B2 is GRANTED;

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

FURTHER ORDERED that claims 1–9 of U.S. Patent No. 9,327,025 B2 be CANCELLED.

IPR2017-00547
Patent 9,327,025 B2

PETITIONER:

Robert D. Leighton A.
Colin Wexler
GOLDBERG KOHN, LTD.
robert.leighton@goldbergkohn.com
colin.wexler@goldbergkohn.com

PATENT OWNER:

Barry Choobin
barry@choobinpatent.com