

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MUELLER SYSTEMS, LLC,
Petitioner

v.

REIN TECH, INC.,
Patent Owner.

IPR2020-00099
Patent 8,347,427 B2

Before CARL M. DEFRANCO, TIMOTHY J. GOODSON, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

ORDER

Granting Request for Adverse Judgment After Institution of Trial
37 C.F.R. § 42.73(b)
and
Lifting Stay of *Ex Parte* Reexamination Control No. 90/014,351
35 U.S.C. § 315(d); 37 C.F.R. § 42.122(a)

I. INTRODUCTION

Petitioner filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review (“IPR”) of claims 1–8, 13–16, and 18–20 of U.S. Patent No. 8,347,427 B2 (“the ’427 patent”). Pet. 1. We instituted trial on all challenged claims (Paper 9), and entered an Order staying the concurrent *ex parte* reexamination of the ’427 patent, namely Reexamination Control No. 90/014,351 (Paper 11). Thereafter, Patent Owner filed a Request for Adverse Judgment, in which it “respectfully requests entry of adverse judgment in this IPR under 37 C.F.R. § 42.73(b)(2).” Paper 12, 1. Petitioner has not filed an opposition to Patent Owner’s Request for Adverse Judgment, and the deadline for any such opposition has passed.

II. ANALYSIS

A party may “request judgment against itself at any time during a proceeding.” 37 C.F.R. § 42.73(b). The particular provision under which Patent Owner requests adverse judgment provides that requests for adverse judgment include “[c]ancellation or disclaimer of a claim such that the party has no remaining claim in the trial.” *Id.* § 42.73(b)(2). Patent Owner’s request for adverse judgment thus constitutes a request for cancellation of all claims challenged in the Petition, leaving no claims for trial. As no claims will remain for trial, entry of adverse judgment against Patent Owner is appropriate.

Adverse judgment brings with it certain consequences that are specified in the rules governing these proceedings. In particular, pursuant to 37 C.F.R. § 42.73(d)(3)(i), Patent Owner “is precluded from taking action inconsistent with the adverse judgment, including obtaining in any patent . . .

[a] claim that is not patentably distinct from a finally refused or canceled claim.”

Our entry of adverse judgment brings about the conclusion of this proceeding. In view of the completion of this proceeding, it is appropriate to lift the stay of the concurrent *ex parte* reexamination. *See* Paper 11, 7 (“Reexamination Control No. 90/014,351 is stayed pending the termination or completion of IPR2020-00099.”).

III. CONCLUSION

We grant Patent Owner’s request for adverse judgment. We lift the stay of Reexamination Control No. 90/014,351.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s request for adverse judgment is *granted*;

FURTHER ORDERED that judgment against Patent Owner, pursuant to 37 C.F.R. § 42.73(b)(2), is *entered*;

FURTHER ORDERED that claims 1–8, 13–16, and 18–20 of U.S. Patent No. 8,347,427 B2 are *cancelled*;

FURTHER ORDERED that this Order constitutes a Final Written Decision under 35 U.S.C. § 318(a);

FURTHER ORDERED that the stay of Reexamination Control No. 90/014,351 is *lifted*;

FURTHER ORDERED that, no later than one week after entry of this Order, Patent Owner shall file a copy of this Order in Reexamination Control No. 90/014,351; and

FURTHER ORDERED that, pursuant to 37 C.F.R. § 42.73(d)(3), Patent Owner shall not take any action inconsistent with this adverse judgment, including obtaining in any patent a claim that is not patentably distinct from the cancelled claims in this proceeding.

IPR2020-00099
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