

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., TEVA PHARMACEUTICALS
USA, INC., and INVAGEN PHARMACEUTICALS, INC.

Petitioners,

v.

BAYER PHARMA AKTIENGESELLSCHAFT,
Patent Owner.

IPR2022-00517¹
Patent 10,828,310 B2

Before JEFFREY N. FREDMAN, JOHN G. NEW, and RYAN H. FLAX,
Administrative Patent Judges.

FLAX, *Administrative Patent Judge.*

JUDGMENT

Granting Petitioners Joint and Unopposed Motion to Withdraw and Request
for Adverse Judgment
After Institution of Trial and on Remand
37 C.F.R. § 42.73(b)

¹ IPR2022-01513 and IPR2022-01515 have been joined with this proceeding.

I. INTRODUCTION

Mylan Pharmaceuticals Inc. (“Mylan”) filed a Petition requesting *inter partes* review of claims 1–8 of U.S. Patent No. 10,828,310 B2 (Ex. 1001, the “’310 patent”), owned by Bayer Pharma Aktiengesellschaft (“Patent Owner”). Paper 1 (“Pet.”). Trial was instituted. Paper 15. Teva Pharmaceuticals USA, Inc. (“Teva”) and Invagen Pharmaceuticals, Inc. (“Invagen”) both filed substantively identical petitions to Mylan’s, with Motions for Joinder to join this proceeding, which were granted. IPR2022-01513, Papers 1, 3, 33; IPR2022-01515, Papers 1, 3, 32. We refer collectively to Mylan, Bayer, and Invagen as “Petitioners.”

We entered a Final Decision finding all claims proven unpatentable. Paper 70.

Our Final Decision was appealed to the U.S. Court of Appeals for the Federal Circuit, which concluded: “we affirm the Board’s judgment holding claims 1–4 unpatentable, vacate the judgment of unpatentability with respect to claims 5–8, and remand for further proceedings consistent with this opinion.” Paper 73, 11. Thus, the unpatentability of claims 1–4 of the ’310 patent stands affirmed and is not at issue on remand, but remaining at issue on remand is the patentability of challenged claims 5–8 under “the correct construction” of certain claim language. *Id.* at 9.

Each Petitioner requested authorization to file a motion to withdraw from the proceedings, which we *authorized*, and the Petitioners also requested authorization to file such a motion jointly, which we also *authorized*. See Ex. 3003; Paper 78. We explained that such a motion would “be considered an express abandonment of the proceeding(s) and a

request for adverse judgment as to the remanded matters under 37 C.F.R. § 42.73(b).” Paper 78, 2.

II. DECISION

Petitioners jointly and unopposed, as authorized, now “move to withdraw from IPR2022-00517, IPR2022-01513, and IPR2022-01515, respectively, in view of the decision on appeal and orders in collateral litigation. Paper 78, 1 (“Motion” and “Mot.”). Petitioners further express that they “understand that the Board will treat this motion as ‘an express abandonment of the proceeding(s) and a request for adverse judgment as to the remanded matters’ under 37 C.F.R. §42.73(b)(4).” *Id.*

“A party may request judgment against itself at any time during a proceeding. Actions construed to be a request for adverse judgment include: . . . [a]bandonment of the contest.” 37 C.F.R. §42.73(b)(4).

We find good cause exists to grant Petitioners’ request to withdraw from the proceedings, which is a request for adverse judgment (with respect to challenged claims 5–8).

Thus, we *grant* Petitioners’ Joint Unopposed Motion to Withdraw and request for adverse judgment. This disposes of all issues in this proceeding.

ORDER

Accordingly, it is:

ORDERED that Petitioners’ Joint Unopposed Motion to Withdraw from this proceeding, and request for adverse judgment, is *granted*;

FURTHER ORDERED that adverse judgment against Petitioners in IPR2022-00517, IPR2022-01513, and IPR2022-01515, as to claims 5–8 of U.S. Patent 10,828,310 B2 is *entered* under 37 C.F.R. § 42.73; and

FURTHER ORDERED that no other relief is granted.

IPR2022-00517
Patent 10,828,310 B2

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