

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEX RECREATION CORP.,
Petitioner,

v.

BESTWAY INFLATABLES AND MATERIAL CORP.,
Patent Owner.

IPR2023-00486
Patent 10,687,633 B2

Before BARRY L. GROSSMAN, KIMBERLY McGRAW, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

JUDGMENT

Granting Request for Adverse Judgment After Institution of Trial
37 C.F.R. § 42.73(b)

I. INTRODUCTION

On January 21, 2023, Intex Recreation Corp. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1, 2, 16, 19, and 20 of U.S. Patent No. 10,687,633 B2 (Ex. 1001, “the ’633 patent”). Paper 1 (“Pet.”). Thereafter, Bestway Inflatables and Material Corp. (“Patent Owner”) filed a Preliminary Response (Paper 8), Petitioner filed a Preliminary Reply (Paper 10), and Patent Owner filed a Preliminary Sur-Reply (Paper 11). On September 19, 2023, we instituted an *inter partes* review of the challenged claims. Paper 12.

On December 13, 2023, Patent Owner filed a Request for Entry of Adverse Judgment pursuant to 37 C.F.R. § 42.73(b)(2). Paper 14. In the Request, Patent Owner asks us to “enter adverse judgment cancelling claims 1, 2, 16, 19, and 20 of U.S Patent No. 10,687,633 B2 pursuant to 37 C.F.R. § 42.73(b)(2).” *Id.* at 1 (also noting that Patent Owner would have “no remaining claim in the trial”). Patent Owner additionally explains that Petitioner does not oppose the request for adverse judgment. *Id.*

II. ANALYSIS

A party may request entry of adverse judgment against itself at any time during a proceeding. 37 C.F.R. § 42.73(b). Actions construed to be a request for adverse judgment include cancellation of patent claims such that a party has no remaining claim in the trial. 37 C.F.R. § 42.73(b)(2). Patent Owner’s request to cancel claims 1, 2, 16, 19, and 20 of the ’633 patent leaves no claim remaining in the trial. Accordingly, entry of adverse judgment against Patent Owner pursuant to 37 C.F.R. § 42.73(b) is appropriate.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1, 2, 16, 19, and 20 of U.S. Patent No. 10,687,633 B2 are *cancelled*;¹

FURTHER ORDERED that Patent Owner's Request for Entry of Adverse Judgment pursuant to 37 C.F.R. § 42.73(b) is *granted*;

FURTHER ORDERED that adverse judgment is entered against Patent Owner with respect to claims 1, 2, 16, 19, and 20 of U.S. Patent No. 10,687,633 B2;

FURTHER ORDERED that IPR2023-00486 is *terminated*;

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

FURTHER ORDERED that because this is a Final Written Decision, parties to this proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

¹ See 37 C.F.R. § 42.80 (indicating that, after the Board issues a final written decision in an *inter partes* review proceeding, the Office will issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable).

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For PETITIONER:

R. Trevor Carter
Andrew M. McCoy
Reid E. Dodge
FAEGRE DRINKER BIDDLE & REATH LLP
trevor.carter@faegredrinker.com
andrew.mccoy.ptab@faegredrinker.com
reiddodgeptab@faegredrinker.com

For PATENT OWNER:

John S. Artz
Michael D. Saunders
DICKINSON WRIGHT PLLC
jsartz@dickinsonwright.com
msaunders@dickinson-wright.com