

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOTE, LLC,
Petitioner,

v.

STEAMBOAT PADDLESPORTS, LLC
Patent Owner.

IPR2024-00889
Patent 10,479,458 B2

Before BARRY L. GROSSMAN, CYNTHIA L. MURPHY, and
JASON W. MELVIN, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

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

BOTE, LLC (“Petitioner”) filed a Petition to institute *inter partes* review of claims 1–15 of U.S. Patent No. 10,479,458 (Ex. 1001, “the ’458 Patent”). Paper 2 (“Pet.”). STEAMBOAT PADDLESPORTS, LLC (“Patent Owner”) waived filing a Preliminary Response. Paper 12. We granted institution of trial. Paper 13.

After institution of trial, Patent Owner’s then-of-record counsel filed an unopposed motion for withdrawal from representation of Patent Owner in this proceeding.¹ Paper 15. On January 27, 2025, we entered an order (“the Order”) granting this motion. Paper 16, 3. The Order stated:

As noted in the Scheduling Order, “[i]f Patent Owner elects not to file a response to the Petition, Patent Owner must arrange a conference call with the parties and the Board.” [Paper 14, 9.] Thus, Patent Owner has three options: 1) file a response by February 18, 2025, 2) arrange a conference call in accordance with the Scheduling Order, or 3) stipulate a revised due date with Petitioner and file a response by the stipulated due date. **Patent Owner must appoint counsel to proceed with any of these options, which Patent Owner should do without delay.** Patent Owner’s failure to proceed with one of these options could be viewed as an abandonment of this proceeding. And such abandonment would be construed as Patent Owner’s request for adverse judgment against itself (*see* 37 C.F.R. § 42.73(b)(4)), resulting in cancellation of all of the claims challenged in the Petition.

Id. at 2–3. Petitioner provides evidence that the Order was served on Patent Owner’s registered agent on February 4, 2025. *See* Ex. 1023.²

¹ According to this motion, Patent Owner had informed Counsel that it was “discharging” them in connection with this proceeding. Paper 15, 1.

² The record reflects that Patent Owner has not appointed new counsel. And Petitioner provides evidence that, as of February 4, 2025, Patent Owner had

The record reflects that Patent Owner did not file a response to the Petition by February 18, 2025. Petitioner provides evidence that, as of February 4, 2025, Patent Owner had neither contacted Petitioner to schedule a conference call with the Board nor contacted Petitioner to discuss a stipulation for a revised due date for its Response. *See* Ex. 1024 ¶¶ 5, 6. We view Patent Owner’s inaction as an abandonment of this proceeding, and we construe such abandonment as Patent Owner’s request for adverse judgment against itself.

Thus, under the circumstances of this proceeding, adverse judgment is appropriate, resulting in cancellation of all of the claims challenged in the Petition.³

Accordingly, it is

ORDERED that adverse judgment shall be entered against Patent Owner as to claims 1–15 of the ’458 patent under 37 C.F.R. § 42.73(b).⁴

FURTHER ORDERED that this paper constitutes a final written decision pursuant to 35 U.S.C. § 318(a) holding that claims 1–15 of the ’458 patent are unpatentable based on the adverse judgment; and

“not made any attempt whatsoever to contact Petitioner regarding this IPR.” Ex. 1024 ¶ 7.

³ Patent Owner is reminded of the applicable estoppel provisions in 37 C.F.R. § 42.73(d)(3).

⁴ Petitioner filed a motion asking for a finding that Patent Owner had abandoned the proceedings and constructively requested adverse judgment against itself. *See* Paper 18; Ex. 3001. Petitioner’s motion is dismissed as moot in view of our entry of adverse judgment for the reasons expressed herein. The same applies to Petitioner’s request regarding the submission of supplemental evidence. *See* Ex. 3002.

IPR2024-00899
Patent 10,479,458 B2

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

IPR2024-00899
Patent 10,479,458 B2

FOR PETITIONER:

David Mancino
Kevin Flynn
Douglas Grady
Paul Bruene
BAKER & HOSTETLER LLP
dmancino@bakerlaw.com
kflynn@bakerlaw.com
dgrady@bakerlaw.com
pbruene@bakerlaw.com

FOR PATENT OWNER:

Michael L. Krashin
Alaina Pak
BANNER & WITCOFF, LTD.
mkrashin@bannerwitcoff.com
apak@bannerwitcoff.com