

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

MULLEN INDUSTRIES LLC,
Patent Owner.

Case IPR2025-00739
U.S. Patent No. 10,179,277 B2

PETITIONER'S OPPOSITION TO MOTION TO DISMISS

Petitioner opposes the “Motion to Dismiss”¹ filed by Patent Owner, as dismissal of the IPR is not appropriate in light of Patent Owner’s post-institution disclaimer of all instituted claims. The Board should instead construe the disclaimer as a request for entry of adverse judgment. Under 37 C.F.R. § 42.73(b), “[a]ctions construed to be a request for adverse judgment include: (1) [d]isclaimer of the involved application or patent,” “(2) [c]ancellation or disclaimer of a claim such that the party has no remaining claim in the trial,” and “(4) [a]bandonment of the contest,” all of which have occurred here. The Federal Circuit has explained that “[t]he application of [37 C.F.R. § 42.73(b)] does not on its face turn on the patentee’s characterization of its own request, and such a construction would make no sense.” *Arthrex, Inc. v. Smith & Nephew, Inc.*, 880 F.3d 1345, 1349 (Fed. Cir. 2018) (affirming Board entry of adverse judgment pursuant to 37 C.F.R. § 42.73(b) after patent owner disclaimed all challenged claims). The Board should therefore construe the Patent Owner’s disclaimer, and its subsequent filing of a motion to dismiss, as a request for entry of an adverse judgment pursuant to 37 C.F.R.

¹ Patent Owner did not meet-and-confer with Petitioner prior to filing its motion, and Petitioner is not aware that Patent Owner requested permission from the Board prior to filing its motion. Nevertheless, as Patent Owner has already filed its motion, Petitioner has provided the present response.

§ 42.73(b). *See Advanced Micro Devices, Inc. v. Polaris Innovations Ltd.*, IPR2019-01514, Paper 19 (PTAB Aug. 3, 2020) (entering adverse judgment against patent owner following statutory disclaimer of all challenged claims after IPR institution); *Unified Patents Inc. v. Arsus, LLC*, IPR2020-00948, Papers 18 & 20 (PTAB Feb. 2, 2021) (entering adverse judgment against patent owner following statutory disclaimer after IPR institution, and denying Patent Owner’s motion to vacate the adverse judgment), *aff’d*, *Arsus, LLC v. Unified Patents, LLC*, No. 2021-1648, 2021 WL 5315423 (Fed. Cir. Nov. 16, 2021).

Patent Owner’s citation to *Sanofi-Aventis U.S., LLC v. Dr. Reddy’s Lab ’ys, Inc.*, 933 F.3d 1367 (Fed. Cir. 2019) is misplaced. That case “concerned a district court’s jurisdiction under Article III of the Constitution.” *Arsus*, IPR2020-00948, Paper 20, 2-3 (citing *Sanofi-Aventis*, 933 F.3d at 1373-75). It does not affect the Board’s authority to enter an adverse judgment pursuant to 37 C.F.R. § 42.73(b) following a post-institution disclaimer. *See id.*

The Board should therefore enter an adverse judgment against Patent Owner on all instituted claims.

Dated: November 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. § 42.6, that a complete copy of the attached **PETITIONER'S OPPOSITION TO MOTION TO DISMISS** is being served via electronic mail on the 5th day of November 2025, upon Patent Owner by serving Patent Owner's counsel of record in this proceeding as follows:

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DATED: November 5, 2025

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