

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

C.R. BARD, INC.,
Petitioner,

v.

MEDLINE INDUSTRIES, INC.,
Patent Owner.

Case IPR2015-00513
Patent 8,631,935 B2

Before JOSIAH C. COCKS, JENNIFER MEYER CHAGNON, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

JUDGMENT
Request for Adverse Judgment
37 C.F.R. § 42.73(b)

On July 15, 2015, we instituted an *inter partes* review of claim 21 of U.S. Patent No. 8,631,935 B2 (Ex. 1101, “the ’935 patent”). Paper 9. Patent Owner, Medline Industries, Inc., filed a Request for Adverse Judgment Under 37 C.F.R. § 42.73, on July 23, 2015.¹ Paper 11. Petitioner’s deadline for requesting rehearing of the Institution Decision has passed. *See* 37 C.F.R. § 42.71(d)(1) (“Any [rehearing] request must be filed: . . . [w]ithin 14 days of the entry of a non-final decision or a decision to institute a trial as to at least one ground of unpatentability asserted in the petition . . .”).

In the Request for Adverse Judgment, Patent Owner requested cancellation of claim 21 and sought entry of adverse judgment. Paper 11, 2. Under 37 C.F.R. § 42.73(b), a party may request judgment against itself at any time during a proceeding. Furthermore, under 37 C.F.R. § 42.73(b)(2), actions construed as a request for entry of adverse judgment include cancellation of claims such that the party has no remaining claim in the trial.

Patent Owner not only has requested cancellation of the only claim involved in this *inter partes* review, such that after the cancellation it will have no remaining claim in the trial, but also has expressly requested entry of adverse judgment. Patent Owner’s request to cancel claim 21 of the ’935 patent and request for entry of adverse judgment are *granted*.

Accordingly, it is

ORDERED that judgment is entered against Patent Owner under 37 C.F.R. § 42.73(b);

¹ Although Patent Owner did not receive authorization to file this motion as required by 37 C.F.R. § 42.20(b), because there is no apparent prejudice, we waive that requirement pursuant to our authority under 37 C.F.R. § 42.5(b).

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FURTHER ORDERED that this constitutes a final written decision under 35 U.S.C. § 318(a);

FURTHER ORDERED that claim 21 of U.S. Patent No. 8,631,935 B2 is canceled; and

FURTHER ORDERED that this proceeding is hereby terminated.

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