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Paper 16
Date: December 19, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

MULLEN INDUSTRIES LLC,
Patent Owner.

IPR2025-00702 (Patent 10,967,270 B2)
IPR2025-00703 (Patent 11,033,821 B2)
IPR2025-00737 (Patent 8,585,476 B2)
IPR2025-00738 (Patent 9,744,448 B2)
IPR2025-00739 (Patent 10,179,277 B2)
IPR2025-00740 (Patent 10,828,559 B2)
IPR2025-00741 (Patent 11,376,493 B2)
IPR2025-00742 (Patent 11,904,243 B2)
IPR2025-00743 (Patent 11,947,716 B2)
IPR2025-00744 (Patent 12,019,791 B2)
IPR2025-00745 (Patent 9,662,582 B2)
IPR2025-00746 (Patent 10,974,151 B2)

Before KEN B. BARRETT, JEFFREY S. SMITH, and MIRIAM L. QUINN, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

JUDGMENT
Denying Patent Owner's Motion to Dismiss and
Granting Request for Adverse Judgment After Institution of Trial
37 C.F.R. § 42.73(b)

Meta Platforms, Inc. ("Petitioner") filed Petitions in each of the above-captioned cases requesting *inter partes* review of certain claims ("the challenged claims") of the subject U.S. Patents. *See, e.g.*, IPR2025-00702, Paper 1. Mullen Industries LLC ("Patent Owner") filed Preliminary Responses to the Petitions. *See, e.g.*, IPR2025-00702, Paper 10. Because we determined that Petitioner had demonstrated a reasonable likelihood that it would prevail with respect to at least one challenged claim in each case, we instituted *inter partes* review of all challenged claims on all asserted grounds in all of the cases. *See, e.g.*, IPR2025-00702, Paper 11.

Without seeking prior authorization, Patent Owner filed in each case a Motion to Dismiss. Paper 13[1] ("Motions" or "Mot."). Patent Owner informs us that it has filed statutory disclaimers for all challenged claims. *See id.* at 2; *see also id.*, Exhibit A (Disclaimer in a Patent Under 37 C.F.R.

[1] The parties filed the substantively same papers in all of the captioned cases. Unless otherwise indicated, we refer to the papers filed in IPR2025-00702.

§ 1.321(a)). Petitioner filed an Opposition, arguing that the Board should enter adverse judgment under 37 C.F.R. § 42.73(b) rather than dismissing the cases. Paper 14 ("Pet. Opp."). With our authorization, Patent Owner filed a Reply (Paper 15, "PO Reply") and Petitioner filed a Sur-reply (Paper 16, "Pet. Sur-reply").

In the Motions, Patent Owner, relying on *Sanofi-Aventis U.S., LLC v. Dr. Reddy's Lab'ys, Inc.*, argues that, "[b]ecause all claims at issue have been disclaimed, any case or controversy over the claims is moot," and, "[a]ccordingly, the IPR[s] should be dismissed." Mot. 2 (citing *Sanofi-Aventis U.S., LLC v. Dr. Reddy's Lab'ys, Inc.*, 933 F.3d 1367, 1373 (Fed. Cir. 2019)).

Sonofi-Aventis pertains to the requirement under Article III of the Constitution that there exist a case or controversy to be adjudicated by a district court. *See Sanofi-Aventis*, 933 F.3d at 1372–73. The Board is not a district court or any other Article III court, and Patent Owner has not shown persuasively that *Sanofi-Aventis* supports its argument that dismissal, as opposed to adverse judgement, is appropriate.

After Petitioner asserted that the Board should treat the disclaimers as requests for adverse judgment, Patent Owner argued that dismissal is appropriate "because [Patent Owner] Mullen filed statutory disclaimers on

all challenged claims for the sole purpose of avoiding unnecessary burden and expense for the Board and the parties." PO Reply 2. Patent Owner asserts that the challenged claims are only a subset of those at issue in the parallel district court litigation, and Patent Owner "elected to disclaim the challenged claims and proceed with its district court case on its remaining asserted claims in order to expedite that [district court] case." *Id.* Patent Owner also argues that termination under 37 C.F.R. § 42.72,[2] rather than adverse judgment, is appropriate because the circumstances here are similar to *Unified Patents Inc. v. Data Scape Ltd.*, IPR2019-01115, Paper 27 (PTAB July 17, 2020), where the *inter partes* review was dismissed. *Id.* at 2–3.

Petitioner, on the other hand, argues that "Patent Owner's post-institution disclaimer of all challenged claims and voluntary abandonment of its defense against each IPR are indisputably '[a]ctions construed to be a request for adverse judgment.'" Pet. Sur-reply 1 (quoting 37 C.F.R. § 42.73(b)) (alteration in original). Petitioner asserts, and we agree, that the circumstances here are not similar to those of *Unified Patents*

[2] "The Board may terminate a trial without rendering a final written decision, where appropriate, including where the trial is consolidated with another proceeding or pursuant to a joint request under 35 U.S.C. 317(a) or 327(a)." 37 C.F.R. § 42.72.

Inc. v. Data Scape Ltd. *See id.* In that case, the Court of Appeals for the Federal Circuit affirmed a district court judgment of invalidity of all the challenged claims, and the patent owner subsequently (and inexplicably) filed a statutory disclaimer. *See Unified Patents Inc.,* IPR2019-01115, Paper 27 at 2. The Board noted both the affirmance of the invalidity judgment and the statutory disclaimer, and stated "[u]nder these circumstances, with no claims remaining to be challenged, we determine that it is appropriate to terminate this *inter partes* review." *Id.* (citing 37 C.F.R. § 42.72). Thus, unlike here, that case involved claims subject to a judgment of invalidity, whereas here Patent Owner requests that no judgment be entered.

Petitioner—regarding Patent Owner's assertion that the disclaimers were filed to avoid unnecessary burden and expense for the Board and the parties—argues that Patent Owner opposed the Petition on the merits and waited until after the Board's institution decisions, thus "causing the Board to invest substantial resources to address those arguments and prepare hundreds of pages of detailed institution decisions." Pet. Sur-reply 2–3. Petitioner argues that the effort could have been avoided had Patent Owner filed disclaimers before institution. *Id.* at 3.

Lastly, Petitioner argues that, "[w]ithout entry of adverse judgment, Patent Owner could improperly avoid the regulatory framework by, for example, pursuing claims that are patentably indistinct from the claims on which the Board instituted IPR." *Id.* at 3 (citing 37 C.F.R. § 42.73(d)(3) ("A patent applicant or owner is precluded from taking action inconsistent with the adverse judgment, including obtaining in any patent: (i) A claim that is not patentably distinct from a finally refused or canceled claim . . . .")).

We determine that Petitioner has the better position. Our rules provide that "[a] party may request judgment against itself at any time during a proceeding," and "[a]ctions construed to be a request for adverse judgment include . . . [c]ancellation or disclaimer of a claim such that the party has no remaining claim in the trial." 37 C.F.R. § 42.73(b)(2). "The application of the [adverse judgment] rule on its face does not turn on the patentee's characterization of its own request." *Arthrex, Inc. v. Smith & Nephew, Inc.*, 880 F.3d 1345, 1349 (Fed. Cir. 2018).

In this case, Patent Owner, after the institution decisions, disclaimed the challenged claims such that there are no remaining claims in the trials. Patent Owner presents no persuasive reasons why we should not apply Rule 42.73 or why termination or dismissal is more appropriate. Under the

circumstances of these cases, we construe the filing of disclaimers as requests for adverse judgment.

ORDER

For the foregoing reasons, it is

ORDERED that Patent Owner's Motions to Dismiss are *denied*; and

FURTHER ORDERED that adverse judgment is hereby entered against Patent Owner pursuant to 37 C.F.R. § 42.73(b) with respect to the claims as set forth in the following table.

Case	Patent No.	Claims
IPR2025-00702	10,967,270 B2	4, 5, 16, 17, and 19
IPR2025-00703	11,033,821 B2	1, 4, 11, 16, 30, and 102
IPR2025-00737	8,585,476 B2	1, 2, 4–7, 13, and 17
IPR2025-00738	9,744,448 B2	1, 3, and 6–8
IPR2025-00739	10,179,277 B2	1, 8, 13, and 20
IPR2025-00740	10,828,559 B2	1, 12, 17, and 20
IPR2025-00741	11,376,493 B2	1, 12, 17, and 20
IPR2025-00742	11,904,243 B2	1, 6–10, 14, 17, 22, 24–28, and 30
IPR2025-00743	11,947,716 B2	1, 8, 16, and 18
IPR2025-00744	12,019,791 B2	21, 23, 31, 37, 41, and 42
IPR2025-00745	9,662,582 B2	1, 2, 11 and 13
IPR2025-00746	10,974,151 B2	1–3

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