

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SPACE EXPLORATION TECHNOLOGIES CORP.,  
Petitioner,

v.

BLUE ORIGIN LLC,  
Patent Owner.

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Case IPR2014-01376  
Patent 8,678,321 B2

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Before KEN B. BARRETT, HYUN J. JUNG, and CARL M. DEFRANCO,  
*Administrative Patent Judges.*

DEFRANCO, *Administrative Patent Judge.*

FINAL JUDGMENT AND DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73(b)*

Space Exploration Technologies Corp. (“SpaceX”) filed a petition seeking *inter partes* review of claims 1–13 of U.S. Patent No. 8,678,321 B2 (“the ’321 patent”).<sup>1</sup> Paper 2. On March 3, 2015, we granted the petition

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<sup>1</sup> Additional claims 14 and 15 of the ’321 patent were the subject of a related proceeding in which trial was not instituted. *See Space Exploration Tech. Corp. v. Blue Origin LLC*, IPR2014-01378, Paper 6 (PTAB Mar. 3, 2015).

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and instituted trial on all of the challenged claims. Paper 7. Blue Origin LLC, the owner of the '321 patent, now requests that claims 1–13 be cancelled, and adverse judgment be entered, under 37 C.F.R. § 42.73(b)(2). Paper 11. Also, Blue Origin informs us that the '321 patent is the subject of a co-pending reissue application, specifically, Reissue Patent Application No. 14/559,777, filed December 3, 2014. Paper 10.

A patent owner may request judgment against itself “at any time during a proceeding” upon cancellation of the particular claims at issue such that there is “no remaining claim in the trial.”<sup>2</sup> 37 C.F.R. § 42.73(b)(2). Here, Blue Origin has requested cancellation of all the claims on which trial was instituted, hence, no claims will remain for trial. Paper 11. In view of the cancellation of claims 1–13 of the '321 patent, the entry of final judgment adverse to Blue Origin is appropriate.

#### ORDER

Accordingly, it is hereby

ORDERED that Patent Owner Blue Origin’s request for adverse judgment is *granted*;

FURTHER ORDERED that claims 1–13 of U.S. Patent No. 8,678,321 B2 are *cancelled*;

FURTHER ORDERED that judgment against Patent Owner Blue Origin, pursuant to 37 C.F.R. § 42.73(b)(2), is *entered*;

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<sup>2</sup> Because our rules permit a request for adverse judgment “at any time,” a party need not obtain prior authorization.

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

FURTHER ORDERED that Patent Owner Blue Origin shall file a notice and copy of this final judgment and decision in the files of Reissue Patent Application No. 14/559,777, as well as any other proceeding or action involving the '321 patent; and

FURTHER ORDERED that, pursuant to 37 C.F.R. § 42.73(d)(3), Patent Owner Blue Origin shall not take any action inconsistent with this final judgment and decision, including obtaining in any patent a claim that is not patentably distinct from the cancelled claims in this proceeding.

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