Trials@uspto.gov
571-272-7822

Paper 29
Date Entered: July 13, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG DISPLAY CO., LTD.,
Petitioner,

v.

SURPASS TECH INNOVATION LLC,
Patent Owner.

Case IPR2015-00885
Patent 7,202,843 B2

Before SALLY C. MEDLEY, BRYAN F. MOORE, and BETH Z. SHAW, *Administrative Patent Judges.*

MEDLEY, *Administrative Patent Judge.*

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

Claims 4, 8, and 9 of U.S. Patent No. 7,202,843 B2 are the sole claims involved in this proceeding. Paper 9; Institution Decision. On February 26, 2016, claims 4, 8, and 9 were determined unpatentable in a related proceeding. *See*, *Sharp Corp. v. Surpass Tech Innovation LLC*, IPR2015-00021 (PTAB February 26, 2016), Paper 44 ("Final Written Decision").

Just prior to the scheduled hearing date for this proceeding, and on May 3, 2016, Patent Owner filed an updated mandatory notice indicating that the deadline to file a notice of appeal of the Final Written Decision in IPR2015-00021 had expired and that Patent Owner had not filed a notice of appeal. Paper 24.

During the May 12, 2016 hearing for the instant proceeding, counsel for Patent Owner represented that Patent Owner would take no action to appeal the Final Written Decision in IPR2015-00021, that time to do so had expired, and that claims 4, 8, and 9 are unpatentable. Paper 28, 5–6. Based on such representations, and on May 13, 2016, Patent Owner was ordered to show cause why judgment should not be entered against it as to claims 4, 8, and 9 of U.S. Patent No. 7,202,843 B2 ("the '843 patent"). *See* 37 C.F.R. § 42.73(b)(3). Paper 26 ("Order"). On May 23, 2016, Patent Owner responded to the Order. Paper 27 ("Response").

In the Response, Patent Owner argues there is no Article III standing to adjudicate the patentability of claims 4, 8, and 9. Response 1–2. In particular, Patent Owner argues that because claims 4, 8, and 9 are unpatentable, the Patent Owner would have no Article III standing to appeal any judgment entered here. Response 2. Patent Owner argues that we should not enter adverse judgment against it in this case, but instead terminate the proceeding as moot. *Id.* at 3.

Patent Owner's arguments are not persuasive. Patent Owner has not shown how its alleged lack of standing post judgment bears on whether we should enter judgment in the first instance in this proceeding. Patent Owner does not assert, or provide supporting legal authority to show that we lack authority in the first instance to enter adverse judgment against Patent

Owner based on the circumstances before us. Importantly, Patent Owner's arguments that it would not have Article III standing post judgment or that we should terminate the proceeding as moot,[1] do not address why the Board should not construe Patent Owner's actions, including its concession of unpatentability, as a request for adverse judgment.

Patent Owner failed to timely appeal the Final Written Decision in IPR2015-00021 and acknowledges that its claims are unpatentable. Response 1–2. Based on the particular facts of this proceeding, we construe Patent Owner's actions as a concession of unpatentability of claims 4, 8, and 9 under 37 C.F.R. § 42.73(b)(3).

Accordingly, it is

ORDERED that adverse judgment is entered against Patent Owner as to claims 4, 8, and 9 of U.S. Patent No. 7,202,843 B2, pursuant to 37 C.F.R. § 42.73(b)(3).

[1] Patent Owner does not explain sufficiently why terminating the proceeding as moot would be appropriate. Terminating a proceeding as moot, as opposed to entering adverse judgment would result in different outcomes, insofar as estoppel is concerned. *See*, *e.g.*, 37 C.F.R. § 42.73(d). In the Response, Patent Owner does not address estoppel as a result of terminating the proceeding as moot as opposed to entering adverse judgment. Estoppel appears to us to be an important consideration, yet Patent Owner does not address estoppel in its Response, despite requesting us to terminate the case as moot.

For Petitioner:

William Barrow
wbarrow@mayerbrown.com

Robert Pluta
rpluta@mayerbrown.com

Amanda Streff
astreff@mayerbrown.com

For Patent Owner:

Michael Casey
mcasey@dbjg.com

Wayne Helge
whelge@dbjg.com