

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BATTERY-BIZ, INC.,
Petitioner,

v.

COMARCO WIRELESS TECHNOLOGIES, INC.,
Patent Owner

Case IPR2016-00630 (Patent 7,863,770 B2)
Case IPR2016-00632 (Patent 7,460,381 B2)¹

Before KEVIN F. TURNER, LYNNE E. PETTIGREW, and
ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

ORDER TO SHOW CAUSE
Conduct of the Proceeding
37 C.F.R. § 42.5(a)

¹ We use this caption in this paper to indicate that this Order applies to, and is entered in, both cases. The parties are not authorized to use this caption.

I. INTRODUCTION

Battery-Biz, Inc. (“Petitioner”) filed Petitions for *inter partes* review of claims 7, 8, 13, 14, 37 and 38 of U.S. Patent No. 7,863,770 B2 (Ex. 1001, IPR2016-00630, hereinafter “’630 proceeding”), and of claims 1–4, 6–8, 11, 12, 14, and 17 of U.S. Patent No. 7,460,381 B2 (Ex. 1001, IPR2016-00632, hereinafter “’632 proceeding”). Paper 1, both proceedings. Patent Owner, Comarco Wireless Technologies, Inc., filed a Preliminary Response in the ’632 proceeding. Paper 12, ’632 proceeding. We instituted trial in both proceedings (Papers 15 and 16, ’630 proceeding and ’632 proceeding, respectively) on all challenged claims, issuing a joint Scheduling Order (Papers 16 and 17, ’630 proceeding and ’632 proceeding, respectively), which set October 24, 2016 as DUE DATE 1, the due date by which Patent Owner was required to file a Response to the Petition and Motion to Amend. No alternate dates were stipulated to by the parties.

Patent Owner did not file a Response to the Petition and/or a Motion to Amend by the October 24, 2016 due date set under the Scheduling Order. During the conference call on October 6, 2016, which both parties attended, the parties indicated that they were in settlement discussions and anticipated settlement of the proceedings “in a matter of days.” The panel indicated that the filing of a Joint Termination was authorized, and the panel also indicated that no order, with respect to the initial conference call, would be sent out. Because no papers have been received in either proceeding, we requested a status update from the parties via email on October 19, 2016. No response to that email was received from either party. Patent Owner also has not contacted the Board with any explanation for its failure to participate substantively in these proceedings.

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Pursuant to our rules, “[a]ctions construed to be a request for adverse judgment include . . . [a]bandonment of the contest.” 37 C.F.R.

§ 42.73(b)(4). Patent Owner’s failure to file substantive papers in these trials is consistent with abandonment of the contests. Absent cause, we will enter adverse judgment in both proceedings upon notice to Patent Owner.

Accordingly, within ten (10) business days of the date of this Order, Patent Owner must show cause why adverse judgment under 37 C.F.R.

§ 42.73(b)(4) should not be entered against it in both proceedings. Upon failure to respond or absent a showing of good cause, adverse judgment will be entered against Patent Owner as to the claims upon which both trials were instituted. If Patent Owner has any questions regarding this Order, it is directed to contact the Board to request a conference call with the panel.

II. ORDER

Accordingly, it is

ORDERED that adverse judgment shall be entered as to claims 7, 8, 13, 14, 37 and 38 of U.S. Patent No. 7,863,770 B2 and claims 1–4, 6–8, 11, 12, 14, and 17 of U.S. Patent No. 7,460,381 B2 unless, within ten (10) business days of the date of this Order, Patent Owner files a paper not exceeding ten (10) pages that demonstrates good cause why adverse judgment should not be entered.

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