

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROMETRIC INC.,
Petitioner,

v.

I.Q.S. SHALEV LTD.,
Patent Owner.

Case IPR2017-00767
Patent 7,773,779 B2

Before WILLIAM V. SAINDON, MATTHEW R. CLEMENTS, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

ROESEL, *Administrative Patent Judge*.

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

On July 26, 2017, we instituted *inter partes* review of claims 1–6, 10, 11, and 14–18 of U.S. Patent No. 7,773,779 B2 (“the ’779 patent”). Paper 9. We entered a scheduling order setting October 17, 2017 as the due date for Patent Owner’s response to the petition and/or motion to amend. Paper 10. To date, no response or motion to amend has been filed by Patent Owner.

On November 1, 2017, Petitioner requested a conference call to request that Patent Owner’s failure to file papers be treated as an abandonment that would warrant adverse judgment under 37 C.F.R. § 42.73(b)(4). Pursuant to instructions from the Board, Petitioner conferred with Patent Owner and contacted the Board again on November 7, 2017. Petitioner’s e-mail represented that Patent Owner did not oppose a conference call and would not be submitting any further filings in IPR2017-00767.

A conference call was held on November 16, 2017 among Robert Molitors (counsel for Petitioner), Brian Lynch (counsel for Patent Owner), and Administrative Patent Judges Saindon, Clements, and Roesel. During the call, Patent Owner stated that it does not oppose Petitioner’s request that Patent Owner’s failure to file a response or a motion to amend by the October 17, 2017 due date be treated as an abandonment of the contest that warrants adverse judgment pursuant to 37 C.F.R. § 42.73(b)(4).

The regulation provides in relevant part:

(b) *Request for adverse judgment.* A party may request judgment against itself at any time during a proceeding. Actions construed to be a request for adverse judgment include: . . .

(4) Abandonment of the contest.

37 C.F.R. § 42.73(b)(4).

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Under the circumstances here presented, we determine that Patent Owner has abandoned the contest and that the abandonment should be construed as a request by Patent Owner for adverse judgment against itself.
Id.

Accordingly, it is

ORDERED that adverse judgment is entered, under 37 C.F.R. § 42.73(b)(2)(4), against Patent Owner with respect to claims 1–6, 10, 11, and 14–18 of U.S. Patent No. 7,773,779 B2; and

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

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