

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STINGRAY DIGITAL GROUP, INC.,
Petitioner,

v.

MUSIC CHOICE,
Patent Owner.

Case IPR2017-01193
Patent 9,357,245 B1

Before MITCHELL G. WEATHERLY, GREGG I. ANDERSON, and
JOHN F. HORVATH, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

JUDGMENT
37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Stingray Digital Group, Inc., (“Petitioner”) filed a Petition to institute *inter partes* review of claims 1–9, 12–14, 16, and 17 (“the challenged claims”) of U.S. Patent No. 9,357,245 B1 (Ex. 1001, “the ’245 patent”). Paper 1, 1, 3. Music Choice (“Patent Owner”) filed a Preliminary Response. Paper 5. We instituted review on all challenged claims. Paper 8, 23. Subsequent to our Decision to Institute, and in lieu of filing a Response, Patent Owner disclaimed all of the challenged claims, and requested adverse judgment against itself. Paper 9, 1; *see also* Ex. 2002. For the reasons discussed below, we enter adverse judgment against Patent Owner, and terminate the proceeding.

II. ANALYSIS

Pursuant to 37 C.F.R. § 42.73(b), “[a] party may request judgment against itself at any time during a proceeding.” Moreover, certain actions taken by a party, such as the “[c]ancellation or disclaimer of a claim such that the party has no remaining claim in the trial” can be construed as a request for adverse judgment against that party. *Id.* § 42.73(b)(2). Here, Patent Owner has not only disclaimed all of the challenged claims such that no challenged claim remains pending in the trial, but has explicitly requested adverse judgment against itself. *See* Paper 9, 1; *see also* Ex. 2002.

Accordingly, on the record before us, we enter adverse judgment against Patent Owner pursuant to 37 C.F.R. § 42.73(b) and terminate the trial pursuant to 37 C.F.R. § 42.72.

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III. ORDER

It is:

ORDERED that Patent Owner's request for adverse judgment is *granted*;

FURTHER ORDERED that adverse judgment is entered against Patent Owner; and

FURTHER ORDERED that this proceeding is hereby *terminated*.

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