

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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C&D ZODIAC, INC.,  
Petitioner,

v.

B/E AEROSPACE, INC.,  
Patent Owner.

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Cases<sup>1</sup>

IPR2017-01275 (9,073,641 B2)

IPR2017-01276 (9,440,742 B2)

Before JENNIFER S. BISK, SCOTT A. DANIELS, and  
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

JUDGMENT

*Inter Partes Review*

*37 C.F.R. § 42.73(b)*

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<sup>1</sup> This Order addresses issues that are the same in both cases. Therefore, we exercise our discretion to issue one Decision to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

On June 28, 2018, in response to the Board's Orders instituting on Ground 2 in the above captioned proceedings based on the Supreme Court's decision in *SAS Inst., Inc. v. Iancu*, 138 S.Ct. 1348 (2018), Petitioner filed in each case, a Request for Partial Adverse Judgment against itself with respect to the newly instituted Ground 2, pursuant to 37 C.F.R. § 42.73(b). Paper 33.<sup>2</sup> In both proceedings, Ground 2 asserts the combination of applicant admitted prior art from the '641 patent itself, (Exhibit 1001), and the KLM Crew Rest documents (Exhibit 1009), in view of the knowledge of a person of ordinary skill in the art. *See* Pet. 10–11.

A party may request entry of adverse judgment against itself at any time during a proceeding. 37 C.F.R. § 42.73(b). Actions construed to be a request for adverse judgment include, among other things, abandonment of the contest. 37 C.F.R. § 42.73(b)(4). Petitioner has conceded its challenge based on the KLM Crew Rest documents, because, for one thing, “the Board has already found that the KLM Crew Rest Document is not a printed publication available for use in this proceeding as is required by 35 U.S.C. § 311(b).” Paper 33, 2. Petitioner, therefore, requests partial adverse judgment against itself as to the newly instituted Ground 2. *Id.*, (citing *EMC Corp. v. Intellectual Ventures I, LLC*, IPR2017-00429, Paper 43, (PTAB May 21, 2018) (noting petitioner could “request a partial adverse judgment pursuant to 37 C.F.R. § 42.73(b), on the newly instituted grounds as a way to proceed only on the originally instituted ground and claims”)).

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<sup>2</sup> For consistency, we refer to the specific paper numbers, patent number, and documents in IPR2017-01275.

IPR2017-01275 (9,073,641 B2)

IPR2017-01276 (9,440,742 B2)

Noting that Petitioner's Request does not extend to Ground 1, we enter judgment against Petitioner in this proceeding as to Ground 2. Only Petitioner's challenge under Ground 1 remains in this proceeding.

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Request for Partial Adverse Judgment as to Ground 2 is *GRANTED*; and

FURTHER ORDERED that, judgment is entered against Petitioner as to Ground 2 based on applicant admitted prior art from the '641 patent, (Exhibit 1001), the KLM Crew Rest documents (Exhibit 1009), and in view of the knowledge of a person of ordinary skill in the art.

IPR2017-01275  
Patent 9,073,641 B2

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