

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KVK-TECH, INC.
FLAT LINE CAPITAL, LLC,
Petitioner,

v.

SILVERGATE PHARMACEUTICALS, INC.,
Patent Owner.

Case PGR2017-00039
Patent 9,463,183

Before GRACE KARAFFA OBERMANN, RAMA G. ELLURU,
and MICHELLE N. ANKENBRAND,

Administrative Patent Judges.

OBERMANN, *Administrative Patent Judge.*

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

BACKGROUND

The Petition challenges claims 1–13 (all claims) of U.S. Patent No. 9,463,183 on three grounds: (1) lack of enablement under 35 U.S.C. § 112; (2) lack of written description support under 35 U.S.C. § 112; and (3) obviousness under 35 U.S.C. § 103. Paper 1, 4. In our institution decision, we ordered review of all challenged claims but limited the proceeding to the ground based on obviousness under 35 U.S.C. § 103. Paper 8, 21. On May 1, 2018, we modified our institution decision “to include review of all challenged claims and all grounds presented in the Petition.” Paper 17, 3.

On May 3, 2018, with our prior authorization, the parties filed a Joint Motion to Limit the Petition. Paper 18. Concurrently herewith, we issue an order granting the parties’ Joint Motion to Limit the Petition to remove the two grounds of unpatentability based on 35 U.S.C. § 112, leaving the challenge to claims 1–13 based on 35 U.S.C. § 103 as the sole ground remaining in dispute.

DISCUSSION

A party may request entry of adverse judgment against itself at any time during a proceeding. *See* 37 C.F.R. § 42.73(b). On April 16, 2018, the parties filed a Joint Motion for Adverse Judgment against Petitioner. Paper 16 (“Joint Motion”). On May 3, 2018, the parties indicated that they “jointly continue to consent to entry of adverse judgment against” Petitioner as advanced in the Joint Motion. Paper 18, 1. The parties direct us to 37 C.F.R. § 42.73(b)(4), which we construe as an admission that Petitioner has abandoned the contest. Paper 16, 1; Paper 18, 1.

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CONCLUSION

Under these circumstances, entry of judgment adverse to Petitioner is appropriate, and thus, granted.

It is

ORDERED that adverse judgment is entered against Petitioner under 37 C.F.R. § 42.73(b)(4); and

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

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