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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEVELOPMENTAL TECHNOLOGIES, LLC
Petitioner,

DUPONT SAFETY & CONSTRUCTION, INC,
Patent Owner.

Case PGR2018-00102
Patent No. 9,848,543

* * * * *

TELEPHONIC HEARING BEFORE:
CHIEF JUDGE CARL M. DeFRANCO,
JUDGE SCOTT A. DANIELS, and
JUDGE RYAN H. FLAX

DATE TAKEN: AUGUST 28, 2019
TIME: 11:00 a.m. - 11:11
PLACE: UNITED STATES PATENT AND
TRADEMARK OFFICE

TAKEN BEFORE: HEATHER McEVILLY, COURT REPORTER
AND NOTARY PUBLIC

* * * * *

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P R O C E E D I N G S

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2 THE COURT: Hello, all. This is Judge
3 DeFranco. We're here for a conference call on
4 Case Number: PGR2018-00102, Developmental
5 Technologies versus DuPont Safety and
6 Construction. With me on the line is Judge
7 Daniels and Judge Flax.

8 Do you have a court reporter on the line?

9 THE COURT REPORTER: Yes, Your Honor.

10 THE COURT: Okay. Let's start with the roll
11 call. For petitioner who do we have?

12 MR. OLSEN: We have Steve Olsen for the
13 petitioner. I don't believe Mr. Balderston will
14 be here today.

15 THE COURT: Okay. Welcome, Mr. Olsen.

16 And who do we have for patent owner?

17 MR. GOMBITA: Good morning, Your Honor. This
18 is Stephen Gombita for the patent owner.

19 THE COURT: Okay. Welcome, Mr. Gombita.

20 And who retained the court reporter?

21 MR. OLSEN: Petitioner did.

22 THE COURT: Okay. Mr. Olsen, if you could
23 make sure a copy of the transcript gets filed at
24 your earliest convenience, I would appreciate
25 that. Thank you.

1 MR. OLSEN: Yes, Your Honor.

2 THE COURT: Okay. The purpose of this call is
3 twofold, and I believe both purposes stem for the
4 fact that patent owner elected not to file a
5 patent owner response to the petition. And I
6 believe we received an email from patent owner
7 informing of its nonelection as far as the patent
8 owner response goes. So it complied with the
9 scheduling order to that effect. And also, that
10 email also informed us of the plans to request
11 adverse judgment in this case.

12 Mr. Gombita, we ask is DuPont planning on
13 filing a disclaimer of all of the claims in the
14 543 patent?

15 MR. GOMBITA: We were not planning on it
16 unless we are required to, Your Honor.

17 THE COURT: What do you mean, you're
18 requesting adverse judgement, right? Are you
19 planning on canceling all of the clients that are
20 challenged here?

21 MR. GOMBITA: Yes, we are.

22 THE COURT: Okay. Adverse judgment to cancel
23 all of the claims, claims 1 through 18, correct?

24 MR. GOMBITA: That's correct.

25 THE COURT: Okay. Thank you for clearing that

1 that up, Mr. Gombita.

2 Mr. Olsen, so I understand -- this leads us to
3 the second part of this call.

4 I understand petitioner is seeking leave to
5 file a motion for construction of a request for
6 adverse judgment.

7 Does that mean you want to be involved in
8 drafting the request for adverse judgment?

9 MR. OLSEN: No, Your Honor. Our request was
10 sort of contingent. We're concerned because the
11 patent owner's email correspondence did not seem
12 to be a formal communication as required under
13 Rule 426, nor did it seem to be part of a public
14 record as part of the rules.

15 So if the patent owner was, you know, not
16 formalizing their request, um, we were certainly
17 prepared to move for the Court to find abandonment
18 and to construe that abandonment as a request for
19 adverse judgment, if it was necessary.

20 THE COURT: Mr. Olsen, I think if you looked
21 at the scheduling order. It's typical in the
22 scheduling order -- I presume it's on this case as
23 well. Patent owners require only to arrange
24 conference call with the Board if it seeks to
25 elect. If it elects not to file a patent owner

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