

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH  
ORGANISATION,  
Petitioner,

v.

BASF PLANT SCIENCE GMBH,  
Patent Owner.

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PGR2021-00004  
Patent 10,533,183 B2

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Before ULRIKE W. JENKS, JO-ANNE M. KOKOSKI, and  
ROBERT A. POLLOCK, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

JUDGMENT  
Granting Request for Adverse Judgment  
After Institution of Trial  
*37 C.F.R. § 42.73(b)*

Commonwealth Scientific and Industrial Research Organisation (“Petitioner”) filed a Petition requesting post-grant review of claims 1–9 of U.S. Patent No. 10,533,183 B2 (Ex. 1001, “the ’183 patent”). Paper 1. BASF Plant Science GmbH (“Patent Owner”) did not file a Preliminary Response. We instituted a post-grant review as to all challenged claims on the grounds raised in the Petition on April 22, 2021. Paper 6. Pursuant to the Scheduling Order, Patent Owner was to file a response to the petition and/or a motion to amend the patent by July 16, 2021. Paper 7, 12. Instead, Patent Owner filed a Notice re: Statutory Disclaimer, informing the Board that it was “disclaiming all claims in the patent.” Paper 9, 1 (“Notice”). With its Notice, Patent Owner filed a copy of the Disclaimer in Patent Under 37 C.F.R. § 1.321(a) that was submitted to the Office on July 16, 2021. Ex. 2001 (“Disclaimer”).

Pursuant to our rules, “[a]ctions construed to be a request for adverse judgment include . . . [c]ancellation or disclaimer of a claim such that the party has no remaining claim in the trial.” 37 C.F.R. § 42.73(b)(2). Here, Patent Owner disclaimed claims 1–9 of the ’183 patent under 35 U.S.C. § 253 according to the procedures set forth in 37 C.F.R. § 1.321(a). *See* Ex. 2001, 1. Accordingly, we construe Patent Owner’s Disclaimer as a request that the Board enter judgment against it with respect to claims 1–9, the only claims at issue in this trial, and we grant that request. *See Unified Patents, LLC v. Arsus, LLC*, IPR2020-00948, Paper 18 at 2 (PTAB Jan. 27, 2021) (construing statutory disclaimer of all challenged claims as a request for adverse judgment), *aff’d* Case No. 2021-01648, 2021 WL 5315423 (Fed. Cir. Nov. 16, 2021).

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ORDER

It is hereby

ORDERED that, pursuant to 37 C.F.R. § 42.73(b), adverse judgment is entered against Patent Owner with respect to claims 1–9 of U.S. Patent No. 10,533,183 B2.

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