

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION, SAMSUNG ELECTRONICS CO., LTD., and
SAMSUNG DISPLAY CO., LTD.,
Petitioner,

v.

SURPASS TECH INNOVATION LLC,
Patent Owner.

Case IPR2015-00863
Patent 7,202,843 B2

Before SALLY C. MEDLEY, BRYAN F. MOORE, and
BETH Z. SHAW, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

Claims 4–9 of U.S. Patent No. 7,202,843 B2 are the sole claims involved in this proceeding. Paper 11 (Institution Decision). On February 26, 2016, claims 4, 8, and 9 were determined unpatentable in a related proceeding. *See, Sharp Corp. v. Surpass Tech Innovation LLC*, IPR2015-

00021 (PTAB February 26, 2016), Paper 44 (“Final Written Decision”). Just prior to the scheduled hearing date for this proceeding, and on May 3, 2016, Patent Owner filed an updated mandatory notice indicating that the deadline to file a notice of appeal of the Final Written Decision in IPR2015-00021 had expired and that Patent Owner had not filed a notice of appeal. Paper 35.

During the May 12, 2016 hearing, counsel for Patent Owner represented that Patent Owner would take no action to appeal the Final Written Decision in IPR2015-00021, that the time to do so had expired, and that claims 4, 8, and 9 are unpatentable.¹ Based on such representations, Patent Owner is ordered to show cause why judgment should not be entered against it as to claims 4, 8, and 9 of U.S. Patent No. 7,202,843 B2. *See* 37 C.F.R. § 42.73(b)(3). In particular, we construe Patent Owner’s failure to timely appeal the Final Written Decision in IPR2015-00021 as a concession of unpatentability of claims 4, 8, and 9. *Id.*

Accordingly, it is

ORDERED that Patent Owner shall, within ten (10) days of the date of this order, show cause why judgment should not be entered against it pursuant to 37 C.F.R. § 42.73(b)(3) as to claims 4, 8, and 9; and

FURTHER ORDERED that Petitioner is not authorized to file a response.

¹ We agree with Patent Owner that it would be appropriate to render a Final Written Decision on the merits with respect to claims 5–7, as those claims were not involved in IPR2015-00021.

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