

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

J. KYLE BASS and ERICH SPANGENBERG,
Petitioners,

v.

ALPEX PHARMA SA,
Patent Owner.

Case IPR2016-00245
Patent 8,440,170 B2

Before TONI R. SCHEINER, LORA M. GREEN, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

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

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A conference call was held on Monday, August 29, 2016, among Gregory Gonsalves, counsel for Petitioner; George Snyder, counsel for Patent Owner; and Judges Green, Scheiner, and Bonilla. The panel requested the call in response to the following email sent to the Board by Patent Owner on Monday, August 22, 2016, reproduced below.

Honorable Board Members:

This is to provide notification, in conjunction with the due date of August 23, 2016 set in the Scheduling Order, that Patent Owner Apex Pharma will not be submitting an Opposition (Response) to the Petition filed by Petitioners Bass and Spangenberg. Patent Owner stands ready, in the event the Board deems it necessary or advantageous, to participate in a telephone conference with Board personnel and counsel for Petitioners regarding the foregoing.

Respectfully submitted,

Back-up Counsel for Patent Owner

George B. Snyder

Upon questioning by the panel, counsel for Patent Owner reiterated what was in the email, stating that Patent Owner would not be filing a response to the Petition in this proceeding.

The Patent Owner Response was due August 23, 2016. As of the date of this Order, Patent Owner has not filed such a response, nor have the parties stipulated to a change of its due date. Thus, it is unclear whether Patent Owner is abandoning the contest. Under 37 C.F.R. § 42.73(b)(4), abandonment of this proceeding by Patent Owner would be viewed as a

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request for adverse judgment, and judgment would be entered against Patent Owner.

Under these circumstances, it is

ORDERED that Patent Owner has ten (10) business days from the date of this order to show cause why adverse judgment should not be entered against it.

Petitioner:

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