

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALERE INC.,
Petitioner,

v.

REMBRANDT DIAGNOSTICS, LP,
Patent Owner.

Case IPR2016-01498
Patent 8,623,291 B2

Before CHRISTOPHER L. CRUMBLEY, BRIAN P. MURPHY,
and JON B. TORNQUIST, *Administrative Patent Judges*.

CRUMBLEY, *Administrative Patent Judge*.

JUDGMENT AND FINAL WRITTEN DECISION
Granting Request for Adverse Judgment
35 U.S.C. § 318(a); 37 C.F.R. § 42.73(b)

In this *inter partes* review, we instituted trial on February 14, 2017, to determine the patentability of claims 1, 2, and 9 of U.S. Patent No. 8,623,291 B2. Paper 14, 25. On March 20, 2017, Patent Owner, Rembrandt

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Diagnostics, LP, filed a Request for Cancellation and Adverse Judgment, asking the Board to cancel all claims on which trial was instituted and enter judgment against it. Paper 15 (“Request”). Via email to the Board on March 23, 2017, Petitioner Alere Inc. indicated that it does not oppose Rembrandt’s Request.

Pursuant to 37 C.F.R. § 42.73(b), a party may request entry of adverse judgment against itself at any time during a proceeding. Cancellation or disclaimer of one or more claims, such that the patent owner has no remaining claim in the trial, is construed to be a request for adverse judgment. 37 C.F.R. § 42.73(b)(2). Rembrandt has not only requested cancellation of all claims on which trial was instituted, such that after the cancellation it will have no remaining claim in the trial, but also expressly requested entry of adverse judgment.

ORDER

It is, therefore,

ORDERED that Rembrandt’s Request for Cancellation and Adverse Judgment is *granted*;

FURTHER ORDERED that judgment against Rembrandt is entered under 37 C.F.R. § 42.73(a);

FURTHER ORDERED that a certificate cancelling claims 1, 2, and 9 of U.S. Patent No. 8,623,291 B2 shall issue in due course pursuant to 35 U.S.C. § 318(b) and 37 C.F.R. § 42.80; and

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

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