

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, INC.,
Petitioner,

v.

REALTIME ADAPTIVE STREAMING, LLC,
Patent Owner.

Case IPR2018-00883
Patent 8,934,535 B2

Before KEVIN W. CHERRY, GARTH D. BAER, and
NABEEL U. KHAN, *Administrative Patent Judges*.

KHAN, *Administrative Patent Judge*.

JUDGMENT
Request for Adverse Judgment
37 C.F.R. § 42.73(b)

Unified Patents, Inc. (“Petitioner”) filed a Petition (Paper 2) requesting *inter partes review* of claims 15, 16, 17, 19, 22, and 23 (“the challenged claims”) of U.S. Patent No. 8,934,535 (Ex. 1001, “the ’535 Patent”) on April 6, 2018. Realtime Adaptive Streaming, LLC (“Patent Owner”) filed a Preliminary Response (Paper 11) on July 1, 2018. We instituted *inter partes review* of all the challenged claims on October 11, 2018. Paper 29.

On January 18, 2019, Patent Owner filed a “Disclaimer in Patent under 37 C.F.R. 1.321(a)” with the Patent Office disclaiming claims 15–30 of the ’535 Patent. Ex. 2015. Claims 15–30 include all challenged claims in this proceeding. Patent Owner also filed a Notice of Disclaimer of Challenged Claims informing the Board that in light of the disclaimer, Patent Owner intends to move to terminate the proceeding. Paper 46, 1. On January 29, 2019, Patent Owner emailed the Board requesting authorization to file such motion to terminate and, on the same day, Petitioner emailed the Board opposing the motion. In an email response, we denied Patent Owner’s request for authorization to file a motion to terminate the proceeding.

Patent Owner’s disclaimer of claims 15–30 of the ’535 Patent, disclaims all claims for which trial was instituted. Under 37 C.F.R. § 42.73(b)(2), actions construed as a request for entry of adverse judgment include cancellation or disclaimer of claims such that the party has no remaining claim in the trial. Section “42.73(b) gives the Board authority to construe a patent owner’s actions as a request for an adverse judgement, suggesting the Board’s characterization of the action rather than the patent owner’s characterization is determinative.” *Arthrex, Inc. v. Smith &*

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Nephew, Inc., 880 F.3d 1345, 1349 (Fed. Cir. 2018). “The application of the rule on its face does not turn on the patentee’s characterization of its own request, and such a construction would make no sense.” *Id.* Here, we construe Patent Owner’s action as a request for entry of adverse judgment consistent with § 42.73(b)(2). Thus, entry of judgment adverse to the Patent Owner is appropriate.

ORDER

It is:

ORDERED that adverse judgment against Patent Owner in this proceeding is entered under 37 C.F.R. § 42.73(b)(2); and

FURTHER ORDERED that all scheduled Due Dates (*see* Paper 9) are vacated.

FURTHER ORDERED that this constitutes a Final Written Decision under 35 U.S.C. § 318(a).

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