

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE, LLC,  
Petitioner,

v.

REALTIME ADAPTIVE STREAMING, LLC,  
Patent Owner.

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IPR2019-01035  
Patent 9,769,477 B2

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Before GEORGIANNA W. BRADEN, KEVIN W. CHERRY, and  
KAMRAN JIVANI, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

JUDGMENT

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

On May 6, 2019, Petitioner, Google LLC (“Petitioner”), filed a Petition requesting an *inter partes* review of claims 1, 3, 4, 7, 9, 16, 17, and 20–22 of U.S. Patent No. 9,769,477 B2 (Ex. 1001, “the ’477 patent”). Paper 1. On November 13, 2019, we instituted an *inter partes* review as to all the challenged claims of the ’477 patent. Paper 10.

On May 8, 2020, Patent Owner filed a “Disclaimer in Patent under 37 C.F.R. 1.321(a)” with the Patent Office disclaiming claims 1, 3, 4, 7, 9, 16, 17, and 20–22 of the ’477 patent. Ex. 2013. Claims 1, 3, 4, 7, 9, 16, 17, and 20–22 include all challenged claims in this proceeding. Pursuant to our authorization, Patent Owner also filed a Notice of Disclaimer of Challenged Claims informing the Board of the disclaimer. Paper 21, 1.

Patent Owner’s disclaimer of claims 1, 3, 4, 7, 9, 16, 17, and 20–22 of the ’477 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 & 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 decline to dismiss the proceeding, and instead 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.

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In consideration of the foregoing, it is

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 11) are vacated.

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

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