

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEARABLE CONFIDENCE, LLC,
Petitioner,

v.

3 PAK HOLDINGS, LLC,
Patent Owner.

Case IPR2017-01529
Patent 8,898,812 B2

Before JOSIAH C. COCKS, MICHAEL L. WOODS, and
JASON W. MELVIN, *Administrative Patent Judges*.

MELVIN, *Administrative Patent Judge*.

ORDER
Dismissing Petition
37 C.F.R. § 42.71(a)

Petitioner, Wearable Confidence, LLC, filed a Petition to institute *inter partes* review of claim 15 of U.S. Patent. No. 8,898,812 B2 pursuant to 35 U.S.C. § 311. Paper 1. Patent Owner, 3 Pak Holdings, LLC, did not file a Preliminary Response. On September 8, 2017, the parties contacted the Board by email, seeking authorization to file a “joint motion to terminate the proceeding.” The Board instructed the parties that they were authorized to file a joint motion to dismiss the petition pursuant to 37 C.F.R. § 42.71(a).

The parties filed a Joint Motion to Dismiss IPR Petition. Paper 8. In the Motion, the parties seek dismissal of the petition “without prejudice,” which they explain as “no estoppel under 35 U.S.C. § 315(e).” Paper 8, 1. The parties also seek “termination of this IPR proceeding.” *Id.*

Because we have not instituted review, there is no IPR proceeding to terminate. *Cf.* 35 U.S.C. § 317 (applying to “[a]n *inter partes* review instituted under this chapter”). And whether estoppel under 35 U.S.C. § 315(e) applies to bar a future action by Petitioner is a question that would only have relevance in a hypothetical future case; it is not an issue that we need address here. We grant the parties’ request to dismiss the Petition, as authorized under 37 C.F.R. § 42.71(a).

Accordingly, it is:

ORDERED that the Motion to dismiss the Petition is granted; and

FURTHER ORDERED that other relief sought in the Motion is dismissed as moot.

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