

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CERTOR SPORTS, LLC and SCHUTT SPORTS, LLC,  
Petitioner,

v.

APALONE, INC.,  
Patent Owner.

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IPR2022-00196  
Patent 10,617,167 B2

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Before HYUN J. JUNG, JAMES J. MAYBERRY, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

JUDGMENT  
Adverse Judgment after Institution of Trial  
*37 C.F.R. § 42.73(b)*

Certor Sports, LLC and Schutt Sports, LLC (collectively, “Petitioner”) filed a Petition challenging claims 1–11 and 18 of U.S. Patent No. 10,617,167 B2. Paper 3. Apalone, Inc. (“Patent Owner”) did not file a Preliminary Response. Because Petitioner showed a reasonable likelihood of prevailing in proving at least one of the challenged claims unpatentable, we instituted *inter partes* review and issued a Scheduling Order. Papers 7, 8.

The Scheduling Order set July 20, 2022, as the due date for filing Patent Owner’s response to the Petition and a motion to amend the patent. Paper 8, 11. The parties did not file a notice of stipulation to extend any due date. Patent Owner did not file a response nor a motion to amend the patent by the due date.

Additionally, the Scheduling Order instructed Patent Owner to arrange for a conference call with the Board if Patent Owner elects not to file a response to the Petition. Paper 8, 9. Patent Owner did not arrange for such a conference call.

On July 27, 2022, we ordered Patent Owner to show cause within ten (10) business days why adverse judgment under 37 C.F.R. § 42.73(b) should not be entered against it. Paper 9. Patent Owner did not respond to the Order to Show Cause, and the time to do so has expired.

Pursuant to our rules, “[a]ctions construed to be a request for adverse judgment include . . . [a]bandonment of the contest.” 37 C.F.R. § 42.73(b)(4). Patent Owner’s failure to file a Preliminary Response, a Response to the Petition, and a response to the Order to Show Cause and failure to take any other substantive action are consistent with abandonment of the contest.

Under these circumstances, the entry of judgment adverse to the Patent Owner and cancellation of the challenged claims are appropriate.

ORDER

Accordingly, in view of the above, it is

ORDERED that adverse judgment under 37 C.F.R. § 42.73(b) is ENTERED against Patent Owner;

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

FURTHER ORDERED that claims 1–11 and 18 of U.S. Patent No. 10,617,167 B2 are CANCELLED.

For PETITIONER:

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