

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SMITH & NEPHEW, INC.,  
Petitioner,

v.

CONFORMIS, INC.,  
Patent Owner.

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Case IPR2017-00373 (Patent No. 8,551,169 B2)  
Case IPR2017-00511 (Patent No. 7,981,158 B2)  
Case IPR2017-00544 (Patent No. 7,534,263 B2)  
Case IPR2017-00778 (Patent No. 8,062,302 B2)  
Case IPR2017-00779 (Patent No. 8,062,302 B2)  
Case IPR2017-00780 (Patent No. 8,062,302 B2)<sup>1</sup>

Before PATRICK R. SCANLON, BEVERLY M. BUNTING,  
JAMES A. WORTH, and AMANDA F. WIEKER,  
*Administrative Patent Judges.*

WIEKER, *Administrative Patent Judge.*

Conduct of the Proceeding  
*37 C.F.R. § 42.5*

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<sup>1</sup> We exercise our discretion to issue a common paper in each proceeding with a joint caption. The parties are not authorized to do the same.

IPR2017-00373 (Patent No. 8,551,169 B2)  
IPR2017-00511 (Patent No. 7,981,158 B2)  
IPR2017-00544 (Patent No. 7,534,263 B2)  
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IPR2017-00780 (Patent No. 8,062,302 B2)

On April 24, 2018, the Supreme Court held that a final written decision under 35 U.S.C. § 318(a) must decide the patentability of all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at \*10 (U.S. Apr. 24, 2018). In our Decisions on Institution, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of each challenged patent is unpatentable. *See* IPR2017-00511, Paper 9, 27; IPR2017-00373, Paper 8, 19; IPR2017-00544, Paper 8, 36; IPR2017-00778, Paper 7, 40; IPR2017-00779, Paper 7, 40; IPR2017-00780, Paper 7, 40. Pursuant to the holding in *SAS*, we modify our Decisions on Institution to institute on all of the challenged claims and all of the grounds presented in the Petition, in each captioned proceeding.

Petitioner and Patent Owner shall meet and confer to discuss the need for additional briefing and any adjustments to the schedule. The parties shall participate in a conference call with the Board to discuss any requested additional briefing and schedule changes on May 1, 2018.

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), we modify our Decisions on Institution to include all claims and all grounds presented in the Petition in each captioned proceeding; and

FURTHER ORDERED that Petitioner and Patent Owner shall meet and confer to discuss additional briefing and schedule changes, and shall

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IPR2017-00780 (Patent No. 8,062,302 B2)

participate in a conference call with the Board to discuss these topics on  
May 1, 2018.

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