

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INFOBIONIC, INC.,  
Petitioner,

v.

BRAEMAR MANUFACTURING, LLC,  
Patent Owner.

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IPR2017-00796  
Patent RE43,767 E

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Before PHILLIP J. KAUFFMAN, KEVIN W. CHERRY, and  
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

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

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at \*10 (U.S. Apr. 24, 2018). In our Decision on Institution (Paper 11), we determined that Petitioner demonstrated a reasonable likelihood that it would establish that all of the challenged claims (claims 1–9 and 11–26) of U.S. Patent No. RE43,767 E are unpatentable. Paper 11, 2. Although we instituted review of all challenged claims under Petitioner’s Grounds 1–3, we did not institute review of any claim under Ground 4 or 5, as we determined that Petitioner did not show a reasonable likelihood of prevailing under either of those grounds. *Id.* at 27–34. In view of *SAS*, we modify our institution decision to institute on all of the grounds presented in the Petition, including Grounds 4 and 5.<sup>1</sup>

The parties must, within one week of the date of this Order, provide dates and times when they would be available for a conference call with the panel. Prior to the conference call with the panel, the parties shall confer to discuss the impact, if any, of this Order on this proceeding, including whether supplemental briefing is needed.

In consideration of the foregoing, it is hereby:

ORDERED that our institution decision is modified to include review of all challenged claims and all grounds presented in the Petition; and

FURTHER ORDERED that Petitioner and Patent Owner shall confer to determine the impact of this Order on this proceeding and, within one

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<sup>1</sup> See [https://www.uspto.gov/sites/default/files/documents/guidance\\_on\\_the\\_impact\\_of\\_sas\\_on\\_aia\\_trial\\_proceedings\\_%20%28april\\_26%2C\\_2018%29.pdf](https://www.uspto.gov/sites/default/files/documents/guidance_on_the_impact_of_sas_on_aia_trial_proceedings_%20%28april_26%2C_2018%29.pdf)

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week of this Order provide the parties' availability for a conference call with the panel.

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