

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DEXCOM, INC.,  
Petitioner,

v.

WAVEFORM TECHNOLOGIES, INC.,  
Patent Owner.

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Case IPR2017-01051  
Patent 7,529,574 B2

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Before BART A. GERSTENBLITH, JON B. TORNQUIST, and  
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

ROESEL, *Administrative Patent Judge*.

AMENDED SCHEDULING AND BRIEFING ORDER  
37 C.F.R. § 42.5

## INTRODUCTION

On December 5, 2017, Patent Owner filed a contingent motion to amend, and on February 27, 2018, Petitioner filed a response to the motion. On March 12, 2018, the parties contacted the Board seeking an extension of the page limit for Patent Owner's reply concerning its motion to amend and seeking a sur-reply by Petitioner regarding the motion to amend. The parties asserted that the requested procedural modifications are justified by the change in the allocation of burdens on motions to amend following *Aqua Products, Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017). On March 20, 2018, the parties proposed agreed-upon page limits for the reply and sur-reply and a revised briefing schedule.

The parties' joint request for procedural modifications is reasonable in light of *Aqua Products* and does not result in a change of the oral argument date. *See* Paper 20 (previously changing the oral argument date from May 22, 2018 to June 5, 2018).

## ORDER

It is

ORDERED that, the page limit for Patent Owner's reply regarding its motion to amend shall be eighteen (18) pages;

FURTHER ORDERED that, on or before by April 18, 2018, Petitioner may file a sur-reply of no more than six (6) pages responding to Patent Owner's reply regarding its motion to amend; provided that, Petitioner's sur-reply may not include new testimonial evidence and may not include new prior art grounds of unpatentability;

FURTHER ORDERED that, the Due Date Appendix of our Scheduling Order (Paper 8) is amended as follows:

IPR2017-01051  
Patent 7,529,574 B2

DUE DATE 4 .....**May 3, 2018**

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 .....**May 17, 2018**

Response to observation

Opposition to motion to exclude

DUE DATE 6 .....**May 24, 2018**

Reply to opposition to motion to exclude

DUE DATE 7 .....**June 5, 2018**

Oral argument (if requested)

IPR2017-01051  
Patent 7,529,574 B2

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