

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEXCOM, INC.,
Petitioner,

v.

WAVEFORM TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2017-01051
Patent 7,529,574 B2

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

ROESEL, *Administrative Patent Judge*.

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

On March 8, 2017, Petitioner filed a Petition (Paper 1) seeking *inter partes* review. On September 15, 2017, we instituted *inter partes* review (Paper 7) and entered a Scheduling Order (Paper 8). On December 5, 2017, Patent Owner filed a Response (Paper 17) and a Contingent Motion to Amend (Paper 18). On January 16, 2018, we entered an Order (Paper 20) changing the oral argument date (Due Date 7), and on March 22, 2018, we entered an Order (Paper 24) modifying the schedule and briefing regarding Patent Owner's motion to amend.

On April 27, 2018, we entered an Order (Paper 30) modifying our Institution Decision in view of *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018), to include review of all grounds presented in the Petition. On May 3, 2018, each party filed a request for oral argument. Papers 31, 32.

In response to Paper 30, and the Board's indication that the oral argument date (Due Date 7) would be reset within the window of July 11–13, 2018, the parties agreed, as indicated in emails to the Board on May 4, 6, and 9, 2018, to the procedural modifications set forth in this Order.

In consideration of the foregoing, it is hereby:

ORDERED that, the provision of the Scheduling Order (Paper 8) that states “any arguments for patentability not raised in the [Patent Owner] response will be deemed waived” (*id.* at 7) is vacated to the extent that Patent Owner may rely on arguments and evidence submitted with the Patent Owner Preliminary Response (Paper 5) with respect to the grounds newly instituted in Paper 30;

FURTHER ORDERED that, not later than **June 11, 2018**, Petitioner may file a supplemental brief of up to 5,600 words, along with new

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testimonial evidence and other evidence,¹ all of which shall be limited to the grounds newly instituted in Paper 30;

FURTHER ORDERED that, with respect to any new testimonial evidence and other evidence filed with or relied upon in Petitioner's supplemental brief, the following schedule shall apply:

DUE DATE 4a **June 25, 2018**

Motion for observation regarding cross-examination

Motion to exclude evidence

DUE DATE 5a **June 29, 2018**

Response to observation

Opposition to motion to exclude

DUE DATE 6a **July 5, 2018**

Reply to opposition to motion to exclude; and

FURTHER ORDERED that, oral argument (Due Date 7) is reset for **July 13, 2018**.

¹ This provision reflects the parties' agreement. The Board is not granting Petitioner leave to submit arguments and evidence that should have been included in the Petition, but were not.

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