

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 BENJAMIN D. M. WOOD, JON B. TORNQUIST, and  
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

ROESEL, *Administrative Patent Judge*.

ORDER  
Oral Hearing  
37 C.F.R. § 42.70

We instituted *inter partes* review and later modified the scope of the review in view of *SAS*.<sup>1</sup> Papers 7, 30. Our May 10, 2018 Order provided for additional briefing with respect to the grounds newly instituted in Paper 30 and reset the oral argument date for July 13, 2018. Paper 34. Petitioner and

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<sup>1</sup> *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018).

Patent Owner each requested an oral hearing pursuant to 37 C.F.R. § 42.70(a). Papers 31, 32, 40. The requests are *granted*.

The hearing will commence at **1:30 pm Eastern Time**, on **Friday, July 13, 2018**, and will be conducted at the **USPTO Central Headquarters in Alexandria, Virginia** (the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, 22314). The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

Each party will have one hour of argument time. Petitioner will argue first and may present arguments regarding the challenged claims on which we instituted trial, as well as arguments directed to Patent Owner's Motion to Amend. Patent Owner then will have the opportunity to respond to Petitioner's arguments and present arguments regarding its Motion to Exclude Evidence. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Finally, Patent Owner may use any time it has reserved for rebuttal to respond only to Petitioner's arguments regarding Patent Owner's Motion to Amend and Patent Owner's Motion to Exclude Evidence. No other arguments will be heard.

The Board will provide a court reporter, and the reporter's transcript will constitute the official record of the hearing. The hearing transcript will be entered in the record of this proceeding.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served at least (7) seven business days before the hearing. Demonstrative exhibits are not evidence, but merely a visual aid at the oral arguments. Demonstrative exhibits may not introduce new evidence or raise new arguments, but instead, should cite to evidence in the record. The parties are

directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65) and *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118) for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any objections cannot be resolved, the unresolved objections must be filed with the Board at least (2) two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives and portions thereof are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if the Board deems necessary. Otherwise, the Board will rule on the objections at the hearing.

The parties shall provide the demonstrative exhibits to the Board by emailing them to [Trials@uspto.gov](mailto:Trials@uspto.gov) at least (3) three business days before the hearing. Despite the requirement in § 42.70(b) for parties to file demonstratives, the parties shall not file any demonstrative exhibits in this case without prior authorization from the Board.

To aid in the preparation of an accurate transcript, each party shall provide a paper copy of any demonstratives to the court reporter on the day of the oral argument. Such paper copies shall not become part of the record of this proceeding. The parties are reminded that, during the hearing, the

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presenter should identify clearly each demonstrative exhibit (e.g., by slide or screen number) to ensure the clarity and accuracy of the reporter's transcript.

The Board expects lead counsel for each party to be present at the oral hearing, although any counsel of record may make the actual presentation. If either party anticipates that its lead counsel will not be in attendance at the oral hearing, the party shall advise the Board by email no later than five (5) business days prior to the oral hearing, and such lead counsel shall be available to discuss the matter via conference call if necessary.

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. Requests for audio-visual equipment are to be made (5) five days in advance of the hearing date. The request is to be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov). If the request is not received timely, the equipment may not be available on the day of the hearing.

It is

ORDERED that oral argument will commence at 1:30 PM ET on July 13, 2018.

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