

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

Record of Oral Hearing
Held: July 13, 2018

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

Case IPR2017-01051
Patent 7,529,574 B2

APPEARANCES:

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The above-entitled matter came on for hearing on Friday, July 13, 2018, commencing at 1:30 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE ROESEL: Good afternoon, you may be seated. Give us just a minute here to set up.

We will now hear argument in Case Number IPR2017-01051, Dexcom, Inc. versus WaveForm Technologies, Inc., concerning U.S. Patent Number 7,529,574.

Counsel, please introduce yourselves, starting with Petitioner.

MR. GRIFFITH: Your Honor, Calvin Griffith on behalf of the Petitioner Dexcom, Inc. With me is Matthew Johnson, who is also on the papers. Good afternoon. Thank you for the opportunity to be here.

JUDGE ROESEL: Good afternoon.

Patent Owner?

MR. ALDRICH: Your Honor, Nika Aldrich of Schwabe Williamson & Wyatt on behalf of the Patent Owner, WaveForm Technologies, Inc. I am joined by Karri Bradley and Scott Eads is lead attorney on the case.

JUDGE ROESEL: Thank you. So, according to our June 27th order, each party will have one hour to present its arguments today. Petitioner will argue first and may reserve rebuttal time, which may be used to respond to Patent Owner's arguments on issues for which Petitioner has the burden of persuasion. Patent Owner will argue second, and may also reserve rebuttal time and that rebuttal time can be used to respond to Petitioner's arguments on which Patent Owner bears the burden of persuasion.

1 The parties are reminded that this hearing is open to the public, and
2 a full transcript of it will become part of the record. Patent Owner has filed
3 objections to certain demonstratives of Petitioner, so the panel has
4 considered these objections and they are overruled. The panel determines
5 that path B, as used in Petitioner's slides, was fairly raised by the petition;
6 for example, at page 52 of the petition.

7 Each party may use its demonstratives as a visual aid in presenting
8 its arguments; however, the demonstratives themselves will not become part
9 of the record. To aid the court reporter in preparing the accurate transcript,
10 counsel are requested to please identify the slide numbers as you present
11 them. As a courtesy, counsel should please refrain from objecting during the
12 other side's argument. Any objections can be raised during your own
13 argument time.

14 And with that, Petitioner may begin.

15 MR. GRIFFITH: Your Honor, may I hand up a copy of our slide
16 presentation for the Board? Would that be convenient, or we have a paper
17 copy if you would find that helpful.

18 JUDGE ROESEL: Yes, please. Thank you.

19 MR. GRIFFITH: Sure.

20 JUDGE ROESEL: Would you like to reserve rebuttal time,
21 Petitioner?

22 MR. GRIFFITH: I would, Your Honor. I intend to reserve 15
23 minutes.

24 JUDGE ROESEL: Okay. Hold on just one second, please.

25 MR. GRIFFITH: Your Honor, Calvin Griffith on behalf of
26 Petitioner Dexcom, Inc.

1 There are a number of grounds that are at issue today, both for the
2 existing claims and for contingent amended claims. My comments and my
3 opening remarks will be directed mostly to the first ground, Hagiwara 103,
4 both as to the original claims and the contingent amended claims. And I
5 expect to comment, nevertheless, on Wilson and some of the other
6 references, but for the most part, I think my discussion is going to be largely
7 Hagiwara-focused.

8 The Hagiwara -- I'm on slide 4 -- the Hagiwara -- the combination
9 of Hagiwara 1A and 1D renders all of the existing claims obvious. And one
10 striking thing about this obviousness combination is that it involves a
11 combination of embodiments in a single reference. So this case is a lot like
12 the *Boston Scientific* case cited in the briefs and which I will come to later.

13 Second, in regard to the Wilson grounds, first we will note that
14 Wilson is not limited to Teflon insulation, but regardless, since that ground
15 of unpatentability and the other related grounds with it were opened
16 following the *SAS* decision, we've introduced evidence that shows that the
17 member -- the cellulose acetate membrane does remain on the Teflon layer.
18 And that's significant because that was the primary reason for not instituting
19 on Wilson.

20 And then third, as to the Patent Owner's contingent amended
21 claims, they only add limitations that were well known in the prior art, as the
22 Patent Owner admits. And, indeed, the specification states that those
23 limitations are described in Wilson, which was issued 10 years before the
24 '574 patent, and here, Hagiwara meets those added limitations by itself, or
25 alternatively, in combination with references that disclose these well-known
26 prior art features used for their intended prior art purposes and functions in

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