

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BASF SE,
Petitioner,

v.

FRESENIUS MEDICAL CARE HOLDINGS, INC.,
Patent Owner.

Case IPR2017-01948
Patent 9,353,220 B2

Before JO-ANNE M. KOKOSKI, CHRISTOPHER M. KAISER, and
JEFFREY W. ABRAHAM, *Administrative Patent Judges*.

ABRAHAM, *Administrative Patent Judge*.

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

On April 24, 2018, the Supreme Court held that a final written decision under 35 U.S.C. § 318(a) must decide the patentability of all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, No. 16-969, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018). In our Decision on Institution, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of U.S. Patent No. 9,353,220 B2 is unpatentable. Paper 13, 29. Pursuant to the holding in *SAS*, we modify our institution decision to institute on all of the challenged claims and all of the grounds presented in the Petition.

The parties remain free to stipulate to changes in the schedule under the terms of the Scheduling Order. If, after conferring, the parties wish to otherwise change the schedule or submit briefing not set forth in the Scheduling Order, the parties must, within one week of the date of this Order, request a conference call with the panel to seek authorization for such changes or briefing.

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), we modify our institution decision 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 whether they desire any changes to the schedule or briefing not already permitted under the Scheduling Order, and, if so, request a conference call with the panel to seek authorization for such changes or

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briefing within one week of the date of this Order.

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