

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*.

ORDER  
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). The Court stated “it’s the petitioner, not the Director, who gets to define the contours of the proceeding.” *Id.* at \*5. In addition, the Court stated that the language of 35 U.S.C. § 314(b) indicates a “binary choice” whether to institute an *inter partes* review. *Id.*

In this case, we instituted an *inter partes* review of all challenged claims, but based on only one of the grounds of unpatentability presented in the Petition. Paper 7 (institution decision), 2, 4, 32. In view of *SAS*, we modify our institution decision to institute review based on all 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 grounds presented in the Petition; and

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FURTHER ORDERED that Petitioner and Patent Owner shall confer to determine whether they desire any changes to the schedule or desire 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 briefing within one week of the date of this Order.

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