

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KINGSTON TECHNOLOGY COMPANY, INC.,
Petitioner,

v.

POLARIS INNOVATIONS LTD.,
Patent Owner.

Case IPR2016-01622
Patent 6,850,414 B2

Before SALLY C. MEDLEY, JEAN R. HOMERE, and
KEN B. BARRETT, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

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

Patent Owner filed in this case a Motion to Amend the patent. Paper 18. Briefing on that motion has proceeded serially, with the filing of Petitioner's Opposition (Paper 20), Patent Owner's Reply (Paper 23), and Petitioner's Surreply (Paper 28). On October 4, 2017, and after Patent Owner's Reply but before Petitioner's Surreply, the Court of Appeals for the Federal Circuit issued its decision in *Aqua Products, Inc. v. Matal*, No. 2015-1177, 2017 WL 4399000 (Fed. Cir. Oct. 4, 2017) ("*Aqua Products*").

Patent Owner argued during a recent conference call with the Board that there remains, after *Aqua Products*, an open issue as to whether Patent Owner bears a burden in a Motion to Amend. *See* Ex. 2014 (Transcript of October 5, 2017, Conference Call), 9. Patent Owner, in its Contingent Request for Oral Argument (Paper 27), requests time during the oral argument "to address issues on which Patent Owner bears the burden . . . which may include the following: [w]hether Patent Owner has satisfied its burdens such that its Motion to Amend (Paper 18) should be granted; and [] [a]ny other issues on which Patent Owner bears the burden."

Out of an abundance of caution and in order to allow the parties and the panel to better prepare for oral argument, we offer Patent Owner the opportunity to brief the impact of *Aqua Products* on this proceeding and to address only that for which Patent Owner contends it bears a burden. Patent Owner is not to present in such a brief any arguments directed to those issues for which Petitioner bears the burden, and such arguments by Patent Owner in the brief will not be considered.

It is

ORDERED that Patent Owner is authorized to file a brief, no more than four pages, addressing only the impact of *Aqua Products* on this

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proceeding and that for which Patent Owner contends it bears a burden, no later than November 1, 2017.

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