

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

---

**PATENT OWNER'S BRIEF  
ADDRESSING IMPACT  
OF *AQUA PRODUCTS v. MATAL***

**TABLE OF CONTENTS**

	<b>Page</b>
<b>I.    <i>AQUA ONLY REDUCES</i> PATENT OWNER’S BURDENS.....</b>	<b>1</b>
<b>II.    THE <i>AQUA</i> JUDGES DISAGREE AS TO WHETHER THEIR       STATEMENTS ON THE BURDEN OF PRODUCTION ARE       DICTA.....</b>	<b>2</b>

**TABLE OF AUTHORITIES**

**Page(s)**

**COURT DECISIONS**

*Aqua Products, Inc. v. Matal*,  
--- F.3d ---, 2017 WL 4399000 (Fed. Cir. 2017) ..... 1, 2, 3, 4

**STATUTES**

35 U.S.C. § 316(a)(9)..... 1  
35 U.S.C. § 316(d)..... 3  
35 U.S.C. § 316(e) .....3, 4

**REGULATIONS**

37 C.F.R. § 42.121..... 3

**OTHER AUTHORITIES**

Rules Of Practice For Trials Before The Patent Trials And Appeals Board,  
77 Fed. Reg. 48,626 (Aug. 14, 2012) ..... 4

## EXHIBIT LIST

Exhibit 2001	Cara Garretson. “More DRAM vendors involved in Justice Department probe.” <i>IDG News Service</i> July 21, 2002. Computer World, Inc. November 21, 2016.
Exhibit 2002	“Error Correction Code in SoC FPGA-Based Memory Systems.” <i>Altera Corporation</i> April 2012.
Exhibit 2003	“133 MHz PC SDRAM 64-Bit Non-ECC/Parity 144 Pin UNBUFFERED SO-DIMM SPECIFICATION.” <i>Intel</i> , Revision 1.0C. August 2000
Exhibit 2004	“PC SDRAM Serial Presence Detect (SPD) Specification.” <i>Intel</i> , Revision 1.2B. November 1999.
Exhibit 2005	Declaration of Nathan Nobu Lowenstein in support of Motion for Admission <i>Pro Hac Vice</i>
Exhibit 2006	Institution Decision, <i>Amerigen Pharms. Ltd. v. Shire LLC</i> , IPR2015-02009, Paper 8 (PTAB Apr. 18, 2016)
Exhibit 2007	Patent Owner’s Motion To Amend, <i>Amerigen Pharms. Ltd. v. Shire LLC</i> , IPR2015-02009, Paper 14 (PTAB Jul. 18, 2016)
Exhibit 2008	Petitioner’s Opposition To Motion To Amend, <i>Amerigen Pharms. Ltd. v. Shire LLC</i> , IPR2015-02009, Paper 17 (PTAB Oct. 18, 2016)
Exhibit 2009	Patent Owner Reply To Petitioner’s Opposition, <i>Amerigen Pharms. Ltd. v. Shire LLC</i> , IPR2015-02009, Paper 21 (PTAB Nov. 17, 2016)
Exhibit 2010	Petitioner’s Request For Oral Argument, <i>Amerigen Pharms. Ltd. v. Shire LLC</i> , IPR2015-02009, Paper 27 (PTAB Dec. 9, 2017)
Exhibit 2011	Final Written Decision, <i>Amerigen Pharms. Ltd. v. Shire LLC</i> , IPR2015-02009, Paper 38 (PTAB Mar. 31, 2017)
Exhibit 2012	Deposition Transcript Of Vivek Subramanian (Apr. 19, 2017)
Exhibit 2013	Exhibit 1 To Deposition Transcript Of Vivek Subramanian (Apr. 19, 2017)
Exhibit 2014	Transcript of October 5, 2017 Conference Call

Pursuant to the Board’s October 18, 2017 Order (Paper 29), Patent Owner respectfully submits this brief addressing the impact of *Aqua Products, Inc. v. Matal*, 2017 WL 4399000 (Fed. Cir. 2017) (en banc) (“*Aqua*”), on this proceeding and that for which Patent Owner bears a burden in accordance with that decision.

**I. *AQUA* ONLY *REDUCES* PATENT OWNER’S BURDENS.**

Notwithstanding the disagreement over which statements in *Aqua* concerning burden are dicta, *see infra* § II, two things are clear: (i) *Aqua* only *reduces*, not increases, whatever burdens Patent Owner must meet for its Motion to be granted; and (ii) Patent Owner’s remaining burden is undisputedly already met.

*First*, *Aqua* expressly shifts the burden of persuasion on the patentability question from Patent Owner to Petitioner. A majority of the judges agree, and no judges affirmatively disagree, that the other burdens imposed on Patent Owner as movant—including to show that the proposed claims is non-broadening, supported, and responsive to an instituted ground, § 316(d)(3), and to produce “a full statement of the reasons for” granting the Motion that “clearly points out the patentably distinct features for the proposed new or amended claims”—were unchallenged, and are unchanged. *Id.* at \*35, \*40-41; \*42. Thus, *Aqua* relieves Patent Owner of the burden of persuasion, and does *not* impose new countervailing obstacles to the Motion. *Aqua*’s only effect is to make the Motion *easier* to grant.

*Second*, as was true in *Aqua* itself, 2017 WL 4399000, \*2, \*17 n.6 & \*27, it

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.