

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***

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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

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