

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEXCOM, INC.,
Petitioner,

v.

WAVEFORM TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2016-01679 (Patent 7,146,202 B2)
Case IPR2016-01680 (Patent 8,187,433 B2)¹

Before ERICA A. FRANKLIN, JON B. TORNQUIST, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.²

ROESEL, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

¹ This Order applies to each of the listed cases. We exercise our discretion to issue one Order to be docketed in each case. The parties, however, are not authorized to use this caption for any subsequent papers.

² Administrative Patent Judge Erica A. Franklin replaces former panel member Brian P. Murphy, who is no longer with the Patent Trial and Appeal Board.

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We instituted each of the above-identified *inter partes* reviews. Paper 10 (IPR2016-01679); Paper 10 (IPR2016-01680). An Amended Scheduling Order set December 7, 2017, as the date for oral argument, if requested by either party. Paper 15 (IPR2016-01679); Paper 15 (IPR2016-01680). Petitioner and Patent Owner each requested an oral hearing pursuant to 37 C.F.R. § 42.70(a). Papers 40, 43 (IPR2016-01679); Papers 36, 38 (IPR2016-01680). The requests are *granted*.

The hearing for both proceedings will commence at **10:00 AM Eastern Time, on Thursday, December 7, 2017**, and will be conducted at the **USPTO Central Headquarters in Alexandria, Virginia** (the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, 22314). The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

Each party will have one hour to present its arguments regarding both IPR2016-01679 and IPR2016-01680. Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Accordingly, Petitioner will proceed first to present its case regarding the challenged claims for which the Board instituted trial. Patent Owner will then have an opportunity to respond to Petitioner's arguments. Thereafter, Petitioner may use any time it has reserved for rebuttal to respond to arguments presented by Patent Owner. Patent Owner may not reserve rebuttal time.

The Board will provide a court reporter, and the reporter's transcript will constitute the official record of the hearing. The hearing transcript will be entered in the record of this proceeding.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served at least (7) seven business days before the hearing. Demonstrative

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exhibits are not evidence, but merely a visual aid at the oral arguments.

Demonstrative exhibits may not introduce new evidence or raise new arguments, but instead, should cite to evidence in the record. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65) and *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118) for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any objections cannot be resolved, the parties must file any such objections with the Board at least (2) two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives and portions thereof are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary. Otherwise, the Board will rule on the objections at the hearing.

The parties shall provide the demonstrative exhibits to the Board by emailing them to Trials@uspto.gov at least (3) three business days before the hearing. Despite the requirement in § 42.70(b) for parties to file demonstratives, the parties shall not file any demonstrative exhibits in these cases without prior authorization from the Board.

To aid in the preparation of an accurate transcript, each party shall provide a paper copy of any demonstratives to the court reporter on the day

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of the oral arguments. Such paper copies shall not become part of the record of this proceeding. The parties are reminded that, during the hearing, the presenter should identify clearly each demonstrative exhibit (e.g., by slide or screen number) to ensure the clarity and accuracy of the reporter's transcript.

The Board expects lead counsel for each party to be present at the oral hearing, although any counsel of record may make the actual presentation. If either party anticipates that its lead counsel will not be in attendance at the oral hearing, the party shall advise the Board by email no later than five (5) business days prior to the oral hearing, and such lead counsel shall be available to discuss the matter via conference call if necessary.

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. Requests for audio-visual equipment are to be made (5) five days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

It is

ORDERED that oral argument will commence at 10:00 AM ET on December 7, 2017.

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