

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELYSIUM HEALTH INC.,
Petitioner,

v.

TRUSTEES OF DARTMOUTH COLLEGE,
Patent Owner.

Case No. IPR2017-01795
Patent 8,383,086 B2

Before SUSAN L. C. MITCHELL, CHRISTOPHER G. PAULRAJ, and
JOHN E. SCHNEIDER, *Administrative Patent Judges*.

SCHNEIDER, *Administrative Patent Judge*.

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

The Institution Decision in this case instituted trial on some of the challenged claims, and on the basis of some of the challenged grounds. Paper 9. Subsequently, on April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018). By our order of April 27, 2018, we modified our institution decision in light of *SAS* to institute trial on all of the grounds presented in the Petition. Paper 22. Patent Owner subsequently filed a motion for rehearing asking the panel to reconsider its decision to institute on all grounds. Paper 24.

A conference call was held on May 21, 2016, among respective counsel for Petitioner and Patent Owner, and Judges Schneider, Mitchell, and Paulraj. The purpose of the call was to discuss Patent Owner's motion for rehearing.

During the call, Petitioner indicated that it would like the opportunity to respond to Patent Owner's motion. Patent Owner indicated that it would like the opportunity to file a reply to any response filed by Petitioner. We agreed that Petitioner may file a response to the motion and that Patent Owner may file a reply. Petitioner's response shall be limited to 15 pages and be filed no later than May 29, 2018. Patent owner's reply shall be limited to five pages and be filed no later than June 4, 2018.

Patent Owner then raised the issue of whether the panel would accept a stipulation by the parties limiting the present proceeding to the grounds listed in the initial Institution Decision. We indicated that the parties may enter into a joint stipulation to limit the proceeding to the grounds stated in

our original Institution Decision. We advised the parties to meet and confer on such a stipulation.

Finally, Patent Owner asked if the panel would consider extending the deadline for the Patent Owner's Response until after the panel ruled on the motion. Patent Owner noted that the Patent Owner's Response is currently due on June 4, 2018. Petitioner indicated that it was opposed to any further extension of the current due dates. Petitioner noted that the parties had already extended the due date for Patent Owner's Response and Petitioner's Reply in response to our Order amending the Institution Decision, Paper 23, and that a further extension was unnecessary. As set forth in our Scheduling Order, the parties may stipulate to an extension. However, we are not inclined to extend the due dates at this time absent an agreement by the parties. Patent Owner should file its Response addressing all grounds raised in the Petition.

For the foregoing reasons, it is

ORDERED that Petitioner is authorized to file a response to Patent Owner's motion for rehearing, not to exceed 15 pages, no later than May 29, 2018; and

FURTHER ORDERED that Patent Owner is authorized to file a reply to Petitioner's response, not to exceed 5 pages, no later than June 4, 2018.

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PETITIONER

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