IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: McAuley, et al.

U.S. Patent No.: 8,443,807 Attorney Docket No.: 36784-0042IP1

Issue Date: May 21, 2013 Appl. Serial No.: 12/307,993 Filing Date: June 17, 2009

Title: BREATHING ASSISTANCE APPARATUS

Mail Stop Patent Board

Patent Trial and Appeal Board U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

PETITION FOR INTER PARTES REVIEW
OF UNITED STATES PATENT NO. 8,443,807
PURSUANT TO 35 U.S.C. §§ 311–19, 37 C.F.R. § 42



TABLE OF CONTENTS

I.	INTR	TRODUCTION1				
II.	MAN	NDATORY NOTICES UNDER 37 C.F.R. § 42.8	1			
	A.	Real Party-In-Interest under 37 C.F.R. § 42.8(b)(1)	1			
	B.	Related matters under 37 C.F.R. § 42.8(b)(2)	1			
	C.	Lead and Back-Up Counsel under 37 C.F.R. § 42.8(b)(3)	2			
	D.	Service Information	3			
III.	PAY	MENT OF FEES – 37 C.F.R. § 42.103	3			
IV.	REQUIREMENTS FOR IPR UNDER 37 C.F.R. § 42.104					
	A.	Grounds for standing under 37 C.F.R. § 42.104(a)	3			
	B.	Challenge under 37 C.F.R. § 42.104(b) and relief requested	3			
V.	THE '807 PATENT AND ITS PROSECUTION					
	A.	The '807 patent's disclosure	1			
	B.	The '807 patent's prosecution history	5			
	C.	Person of ordinary skill in the art.	7			
VI.	CLA	CLAIM CONSTRUCTION UNDER 37 C.F.R. § 42.104(B)(3)				
	A.	The claimed "ring" (claim 1).	7			
	B.	The phrase "a plane substantially bisecting the ring, each of the two nasal pillows positioned on opposite sides of the plane" (claim 1)11				
	C.	The phrases "wherein the two side straps are configured to connect and disconnect with the mask assembly" and "wherein the mask assembly is configured to connect to only the two side straps" (claim 1)				
VII.	THE	CHALLENGED CLAIMS ARE UNPATENTABLE AS OBVIOUS.14	1			
	A.	Ground 1: Claims 1-7, 17-19, 24, and 25 are unpatentable as obvious over <i>Gunaratnam</i> in view of <i>Ging</i>	4			
		1. Obviousness of substituting a nasal pillows mask body as disclosed elsewhere in <i>Gunaratnam</i> for the full nasal mask body in <i>Gunaratnam's</i> Figure 135 patient interface	5			
		2. Gunaratnam's Figure 135 patient interface and further detail regarding that patient interface disclosed in Ging teach the				



			claimed "ring" and ring "socket," and an elbow "fiting into" tring and socket, as claimed.	
		3.	Correspondence between the '807 patent claims and the teachings of <i>Gunaratnam</i> and <i>Ging</i>	.21
	B.		nd 2: Claims 1-7, 17-19, 24, and 25 are unpatentable as obviou <i>Gunaratnam</i> in view of <i>Ging</i> and <i>McAuley</i>	
	C.	Ground 3: Claims 1-7, 17-19, 24, and 25 are unpatentable as obvious over <i>Lovell</i> in view of <i>Gunaratnam</i>		
		1.	The combined teachings of Lovell and Gunaratnam	.44
		2.	Correspondence between the '807 patent claims and the teachings of <i>Lovell</i> and <i>Gunaratnam</i>	.46
VIII.	GROU	JNDS	1, 2, AND 3 ARE NOT REDUNDANT	.65
IV	CONO		OM	66



EXHIBIT LIST

EX.#	Exhibit Description
RMD1001	U.S. Patent No. 8,443,807 to McAuley et al. ("the '807 patent")
RMD1002	[RESERVED]
RMD1003	[RESERVED]
RMD1004	U.S. Patent Application Publication No. 2004/0226566 to Gunaratnam et al. ("Gunaratnam")
RMD1005	U.S. Patent Application Publication No. 2003/0196658 to <i>Ging</i> et al. (" <i>Ging</i> ")
RMD1006	[RESERVED]
RMD1007	U.S. Patent No. 6,691,707 to Gunaratnam et al. ("the '707 patent" or "Gunaratnam II")
RMD1008	Declaration of Dr. John Izuchukwu, Ph.D., P.E. ("Izuchukwu Decl.")
RMD1009	File History of U.S. Patent No. 8,443,807 to McAuley et al.
RMD1010	[RESERVED]
RMD1011	[RESERVED]
RMD1012	U.S. Patent No. 7,219,669 to Lovell et al. ("Lovell")
RMD1013	[RESERVED]
RMD1014	Merriam-Webster's Collegiate Dictionary, Eleventh Edition (2004) (selected portions)
RMD1015	[RESERVED]
RMD1016	U.S. Patent No. 4,676,241 to Webb et al. ("Webb")
RMD1017	[RESERVED]
RMD1018	PCT Publication No. WO 2004/022147 to Drew ("Drew")



RMD1019	U.S. Patent 4,782,832 to Trimble et al. ("Trimble" or "'832 Patent")
RMD1020	U.S. Patent 6,431,172 to Bordewick ("Bordewick")
RMD1021	U.S. Patent 6,192,886 to Rudolph ("Rudolph")
RMD1022	U.S. Patent 6,581,594 to Drew et al. ("Drew")
RMD1023	[RESERVED]
RMD1024	ResMed "Mirage Vista TM Nasal Mask: Components Card" publication, ©2005 ResMed Ltd.
RMD1025	[RESERVED]
RMD1026	[RESERVED]
RMD1027	[RESERVED]
RMD1028	[RESERVED]
RMD1029	[RESERVED]
RMD1030	[RESERVED]
RMD1031	[RESERVED]
RMD1032	[RESERVED]
RMD1033	[RESERVED]
RMD1034	PCT Publication No. WO 2005/079726 to McAuley et al. ("McAuley")
RMD1035	ResMed "Mirage Swift TM Nasal Pillows System from ResMed" publication, ©2004 ResMed Ltd.
RMD1036	ResMed "Mirage Swift TM Nasal Pillows System: User's Guide" publication, ©2004 ResMed Ltd.
RMD1037	U.S. Patent No. 7,178,528 ("Lau")



DOCKET

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.

