Filed: December 22, 2016

Filed on behalf of

Patent Owner Fisher & Paykel Healthcare Limited

By: Brenton R. Babcock

Joseph F. Jennings

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main Street, 14th Floor

Irvine, CA 92614

Telephone: 949-760-0404 Facsimile: 949-760-9502

Email: BoxFPH771-2@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED LIMITED, RESMED INC., and RESMED CORP. Petitioners,

v.

FISHER & PAYKEL HEALTHCARE LIMITED Patent Owner.

Case No. IPR2016-01734 U.S. Patent No. 8,443,807

PATENT OWNER'S PRELIMINARY RESPONSE



TABLE OF CONTENTS

I.	INT	RODUCTION AND SUMMARY OF ARGUMENT1					
II.	THE STATUTE BARS INSTITUTION OF AN INTER PARTES REVIEW						
	A.	Petitioners' Contrary Construction of Section 315 Is Meritless					
	B.	Petitioners' Cited Authorities Are Contrary to Two Lines of Supreme Court Precedents					
	C.	Petitioners' Cited Authorities Are Also Contrary to the Rules Enabling Act					
III.	BACKGROUND						
	A.	Overview of the '807 Patent					
	B.	Overview of the Alleged Prior Art					
		1. U.S. Patent Pub. No. 2004/0226566 ("Gunaratnam")	19				
		2. U.S. Patent Pub. No. 2003/0196658 ("Ging")	23				
		3. PCT Pub. No. 2005/079726 ("McAuley")	25				
		4. U.S. Patent No. 7,219,669 ("Lovell")	26				
	C.	Overview of the Prosecution History of the '807 Patent					
IV.	CLAIM CONSTRUCTION						
	A.	Legal Standard3					
	B.	Identification of a Person of Ordinary Skill In the Art					
	C.	Construction of "Ring-Like Connector"33					



TABLE OF CONTENTS (cont'd)

V.	ARGUMENT					
	A.	Legal Standard				
	В.	Institution Should Be Denied Because Both Gunaratnam and Lovell were Expressly Considered by the PTO During Prosecution of the '807 Patent				
	C.	The Claim Charts in the Declaration of Petitioners' Declarant, Dr. Izuchukwu, Should Be Given Little or No Weight				
	D.	Petitioners Have Not Established a Reasonable Likelihood of Prevailing on Ground 1 (Alleged Obviousness of Claims 8, 20, 21, 26, and 27 over Gunaratnam and Ging)			44	
		1.	Obvi	oratnam and Ging Do Not Teach or Make ous "a ring-like connector" as Required by n 8	45	
		2.	Been	ioners Have Not Shown that it Would Have Obvious to Modify the Nasal Cushion Mask Of re 135 To Include a Nasal Pillow Assembly	48	
			a.	Gunaratnam Does Not Teach or Suggest that Nasal Cushions May Be Replaced with Nasal Pillows	48	
			b.	Figures 107G-H of Gunaratnam Do Not Teach or Make Obvious the Interchangeability of Nasal Pillows and Nasal Cushions	49	



TABLE OF CONTENTS (cont'd)

			i.	The Mask Design Shown in Figure 135 Is Fundamentally Different from and Incompatible with the Other Embodiments of Gunaratnam Relied Upon by Petitioners	49
			ii.	Petitioners Have Not Shown that Nasal Pillows Could Be Incorporated into Gunaratnam Figure 135 with a Reasonable Expectation of Success	52
			iii.	Gunaratnam Teaches Against Petitioners' Proposed Modification	56
			iv.	Petitioners' Reliance on Ging Shows It Would Not Have Been Obvious to Incorporate Nasal Pillows into Gunaratnam Figure 135	58
		C.	Izuch Repla	Other Reasons Identified By Dr. nukwu Do Not Provide a Reason to ace the Nasal Cushion of Gunaratnam re 135 with Nasal Pillows	58
	3.	Obvi side	ous "w strap a	n and Ging Do Not Teach or Make Wherein the first side strap and the second re configured to connect and disconnect ask assembly" as Required by Claim 8	59
E.	Petitioners Have Not Established a Reasonable Likelihood of Prevailing on Ground 2 (Alleged Obviousness of Claims 8, 20, 21, 26, and 27 over Gunaratnam, Ging, and McAuley)				
	1.			hould Not Be Instituted for at Least the ovided for Ground 1	61



TABLE OF CONTENTS (cont'd)

		2.	It Would Not Have Been Obvious to Further Modify Gunaratnam Figure 135 to Include a "ring-like connector" as Required by Claim 8	62	
	F.	Petitioners Have Not Established a Reasonable Likelihood of Prevailing on Ground 3 (Alleged Obviousness of Claims 8, 20, 21, 26, and 27 over Lovell and Gunaratnam)			
		1.	Petitioners' Proposed Replacement of the "Four Point Restraining System" of Lovell with the Headgear of Figure 135 of Gunaratnam Would Change the Basic Principle of the Restraining System and Would Not Have Been Obvious	70	
		2.	The Reasons Identified by Petitioners for Replacing the Four Point Restraining System of Lovell with the Headgear Designs of Gunaratnam Are Conclusory and Insufficient	72	
		3.	Petitioners' Proposed Combination of the Mask Assembly of Lovell with the Nasal Pillows From Yet Another Embodiment of Gunaratnam Would Not Have Been Obvious	76	
VI.	CON	ICLUS	SION	78	



DOCKET A L A R M

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.

