

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

RESMED CORP.,)	C.A. No. 1:23-cv-02221-BMB
)	
<i>Plaintiff / Counterclaim-</i>)	RESPONSE TO COUNTERCLAIMS
<i>Defendant,</i>)	FOR INFRINGEMENT
)	
v.)	DEMAND FOR JURY TRIAL
)	
CLEVELAND MEDICAL DEVICES, INC.,)	TO BE FILED UNDER SEAL-
<i>Defendant / Counterclaim</i>)	CONTAINS HIGHLY
<i>Plaintiff.</i>)	CONFIDENTIAL ATTORNEY'S
)	EYES ONLY MATERIAL
)	

**PLAINTIFF RESMED CORP.'S RESPONSE AND AFFIRMATIVE
DEFENSES TO DEFENDANT'S SECOND AMENDED COUNTERCLAIMS FOR
PATENT INFRINGEMENT**

Plaintiff and Counterclaim-Defendant ResMed Corp. (“ResMed” or “Counterclaim-Defendant”), by and through its attorneys, hereby responds to the numbered paragraphs in Defendant and Counterclaim-Plaintiff Cleveland Medical Devices, Inc.’s (“CleveMed” or “Counterclaim-Plaintiff”) Second Amended Answer and Counterclaims for Infringement (“Counterclaims”), and provides its affirmative defenses thereto, as follows:

CLEVEMED'S COUNTERCLAIMS

1. Counterclaim-Plaintiff Cleveland Medical Devices, Inc. (“CleveMed”) alleges the following counterclaims against Counterclaim-Defendant ResMed Corp. (“ResMed”).

ANSWER: Counterclaim-Defendant ResMed responds to the following counterclaims as alleged by CleveMed.

SECOND AFFIRMATIVE DEFENSE
(Noninfringement)

203. Although ResMed does not bear the burden of proof on this issue, ResMed states that neither ResMed nor its parent corporation infringe the asserted patents, either literally or under the doctrine of equivalents. Further, neither ResMed nor its parent corporation contributed to infringement by others. Additionally, neither ResMed nor its parent corporation induced others to infringe the asserted patents. Finally, neither ResMed nor its parent corporation have willfully infringed any valid asserted claim of the asserted patents.

THIRD AFFIRMATIVE DEFENSE
(Invalidity)

204. Upon information and belief, one or more claims of the Asserted Patents are invalid and/or unenforceable for failing to meet one or more requirements of patentability set forth in Part II of Title 35 of the United States Code, including but not limited to sections 101, 102, 103, 112, 115, 116, and/or 256, or judicially created doctrines of invalidity including, but not limited to, obviousness-type double patenting or the Rules and Regulations of the USPTO relating thereto.

205. Specifically, all of the asserted claims are invalid under 35 U.S.C. §102 and/or §103 in view of at least any reference listed on the face of the patents, any reference cited or referred to in the prosecution histories of the patents at issue, foreign counterparts to those patents, and related U.S. and foreign patents, the prior art identified in any of ResMed's invalidity contentions served in *Cleveland Medical Devices Inc. v. ResMed Inc.*, C.A. No. 22-974 (D. Del.), and/or any prior art identified in ResMed's forthcoming contentions in this case, either individually or in combination. As examples only, ResMed identifies the following prior art:

'284, '921, '029, '333, and '680 patents:

- United States Patent No. 6,167,258 (“Schmidt”)
- PCT Publication No. WO 2005/096737 (“Farrell”)
- United States Patent Application Publication No. 2002/0165462 (“Westbrook”)
- United States Patent Application Publication No. 2003/0213489 (“Mechlenburg”)
- US Patent No. 6,287,264 (“Hoffman”)
- US Patent No. 6,644,311 (“Truitt”)
- Mohd Fadlee A. Rasid and Bryan Woodward, *Bluetooth Telemedicine Processor for Multichannel Biomedical Signal Transmission via Mobile Cellular Networks*,” IEEE Transactions on Information Technology in Biomedicine, Vol. 9, No. 1, March 2005, at 35 (“Rasid”)
- ResMed AutoSet Spirit (S7)
- ResMed S8 AutoSet Vantage
- ResMed’s ResTraxx System, including ResTraxx Module and ResTraxx Data Center

’512 patent:

- United States Patent No. 9,801,589 to Schwaibold
- United States Patent Application Publication No. 2003/0199945 to Ciulla
- United States Patent No. 7,967,760 to Lang
- United States Patent Application Publication No. 2002/0022973 to Sun
- United States Patent No. 6,167,258 to Schmidt
- Puzzuoli, et al., *Remote Transmission and Analysis of Signals from Wearable Devices in Sleep Disorders Evaluation*, Computers in Cardiology, 2005, 32:53-56

206. ResMed further incorporates by reference the prior art and arguments included in PGR2024-00012 filed by ResMed Corp. against the ’284 patent on December 13, 2023. For example, the claims of the ’284 are not entitled to a priority date of November 4, 2005. It is well

DATED: April 25, 2024

OF COUNSEL:

Sean Cunningham (admitted *Pro Hac Vice*)
Tiffany Miller (admitted *Pro Hac Vice*)
David R. Knudson (admitted *Pro Hac Vice*)
DLA PIPER LLP (US)
4365 Executive Drive, Suite 1100
San Diego, CA 92121-2133
Telephone: 858-677-1400
sean.cunningham@dlapiper.com
tiffany.miller@dlapiper.com
david.knudson@dlapiper.com

/s/ Michael R. Reed
Michael R. Reed (0063995) Trial Attorney
Elise K. Yarnell (0093996)
HAHN LOESER & PARKS LLP
65 East State Street, Suite 1400
Columbus, Ohio 43215
Tel. (614) 221-0240
Fax: (614) 221-5909
Email: mreed@hahnlaw.com
eyarnell@hahnlaw.com

Angela C. Whitesell (admitted *Pro Hac Vice*)
DLA PIPER LLP (US)
1201 N. Market Street, Suite 2100
Wilmington, DE 19801-1147
Telephone: 302-468-5711
angela.whitesell@dlapiper.com

*Attorneys for Plaintiff / Counterclaim-
Defendant ResMed Corp.*