

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP,)CASE IPR2025-00246
)U.S. PATENT NO. 11,857,333
PETITIONER,)
)
V.)MOBILE VIDEOCONFERENCE
)DEPOSITION OF
CLEVELAND MEDICAL)JASON P. KIRKNESS, Ph.D.
DEVICES, INC.,)
)
PATENT OWNER.)
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MOBILE VIDEOCONFERENCE DEPOSITION OF JASON P. KIRKNESS, Ph.D., taken remotely before Cheryl A. Rooney, RPR, CRR, Online General Notary Public within and for the State of Nebraska, beginning at 9:00 a.m. PST, on February 4, 2026.

A P P E A R A N C E S

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<p style="text-align: right;">Page 4</p> <p>1 (Whereupon, the following proceedings 2 were had, to-wit:) 3 JASON P. KIRKNESS, Ph.D., 4 having been first duly sworn, 5 was examined and testified as follows: 6 DIRECT EXAMINATION 7 BY MS. FULLER: 8 Q. Good morning, Dr. Kirkness. 9 A. Good morning. 10 Q. Do you understand why you're here 11 today? 12 A. For a deposition. 13 Q. And the deposition is in 14 IPR2025-00246; is that correct? 15 A. That's correct. 16 Q. Is there any reason why you cannot 17 provide honest and truthful testimony today? 18 A. No. 19 Q. In preparing for your deposition, did 20 you look at or consider any materials? 21 A. So there are materials that I've 22 looked at and considered, yes. 23 Q. What were those materials that you 24 reviewed? 25 A. So I have a list of the exhibits that</p>	<p style="text-align: right;">Page 6</p> <p>1 2020198473. And then there is also -- there is 2 a number of other exhibits as well. 3 Q. Did you review any materials or papers 4 that are outside of this IPR in today's 5 preparation -- in preparation for today's 6 deposition? 7 A. So I have -- so you know that I've 8 reviewed a number of other patent cases that are 9 related. But in terms of focusing in on the 10 deposition, only the exhibits that relate to 11 this I've specifically reviewed for this case. 12 Q. And I guess I should address some 13 housekeeping before we go further into this 14 deposition. For today's deposition, do you have 15 hard copies of exhibits such as your 16 declaration, as well as Toge in front of you? 17 A. I do. I have my declaration in front 18 of me, and I can access the patent which you 19 referred to, JP2002-291-8899A patent, the Toge 20 patent, yes. 21 Q. And those are all clean copies? 22 A. Clean copies, yes. 23 Q. So I will just for the purposes of 24 questioning, I'll assume that you have the 25 papers and exhibits in front of you. If you do</p>
<p style="text-align: right;">Page 5</p> <p>1 have been included in that -- I guess I could 2 list them off if you'd like, the exhibit 3 numbers? 4 Q. I guess was it the updated exhibit 5 list that was filed? 6 A. Yeah, it would be the exhibits that 7 are included in the -- the exhibits that would 8 be included related to the IPR, which are the 9 IPR for the '333 patent, so Patent 10 Number 11,857,333, quite often referred to as 11 the '333 patent. 12 I've also reviewed the patent owner's 13 response to that, the declaration of David 14 Burkholder in support of the patent owner's 15 response to the patent. The patent owner's 16 motion to amend. The declaration of Dr. Michael 17 Goodrich in support of the motion to amend. The 18 petitioner's opposition to the motion to amend. 19 And the patent itself, of course, including 20 there are a number of other prior arts and other 21 relevant exhibits to that, which include the 22 patent -- the Toge patent, which is patent 23 JP2002-291-8899A patent. 24 Then there's the Kumar patent, which 25 is U.S. Patent Application, publication</p>	<p style="text-align: right;">Page 7</p> <p>1 not, if I introduce an exhibit and you do not 2 have it in front of you, please let me know and 3 I can upload that exhibit for you. Does that 4 work? 5 A. Thank you. So would you like me to 6 get that exhibit -- those two things in front of 7 me now? 8 Q. Yes, we can have that ready for you. 9 A. Okay. 10 Q. Let's first go to Exhibit 1044, which 11 is the -- I call it the Toge reference. Let me 12 know when you have that exhibit in front of you. 13 A. I have that in front of me. 14 Q. Can I direct you to Paragraph 19 of 15 Toge. I'll let you review that paragraph 16 quickly, and once you're done reviewing, please 17 let me know. 18 A. Okay. 19 Q. So in this paragraph it states that 20 mobile terminal 5 in possession of physician or 21 nurse is capable of being mobilized in 22 emergencies. Do you have an understanding of 23 what being capable of mobilized means in this 24 context? 25 A. So in this context my belief is -- and</p>

<p style="text-align: right;">Page 8</p> <p>1 if you read down to the bottom of that 2 paragraph, it's referring to the mobile terminal 3 includes mobile phones, PHS, PDA, and Packard 4 Bell, et cetera. So a mobile computer, 5 basically, a mobilized computer. 6 Q. So mobilized meaning not stationary? 7 A. So mobilized, I would say being able 8 to be mobilized. Things that are able to be 9 mobilized are not always in motion. So I would 10 say that the definition of something that is 11 able to be mobilized doesn't mean that it is 12 always in motion. 13 Q. But it's able to be, for example, 14 picked up and moved from one place to another; 15 is that correct? 16 A. So I mean, you know, I would agree 17 that something that is being mobilized would be 18 portable, would be able to be moved. That seems 19 fair. 20 Q. So in the context of Toge, capable of 21 being mobilized in emergencies meaning that a 22 physician can use a mobile terminal and able to 23 address emergency situations; is that correct? 24 A. So it specifically says the mobile 25 terminal in the possession of a physician or</p>	<p style="text-align: right;">Page 10</p> <p>1 the -- it's capable of being mobilized in 2 emergencies by the physician-side computer, 3 relay device or other mobile terminals possessed 4 by the hospital personnel. 5 So in terms of what it does in this 6 paragraph, it doesn't say that -- it doesn't say 7 exactly that. So Toge in general, if it's 8 relating to the mobile -- what the mobile 9 terminal does is described -- in Figure 1 it 10 shows the overall configuration of the remote 11 medical telemedicine system. And this comprises 12 of a positive pressure artificial respiration 13 system or PAP device, a relay device, 14 physician-side terminals, and a mobile terminal, 15 as well as a physician-side computer, all 16 connected in a communication network. 17 So in regards to factor 19, the mobile 18 terminal -- basically it says here it's capable 19 of being mobilized by the physician's computer, 20 relay device, or other mobile terminals 21 possessed by the hospital personnel. 22 Q. Can the physician's mobile terminal 23 adjust remotely a patient's CPAP device in Toge? 24 A. So in Toge the physician -- so are you 25 just reading from -- for example, are you just</p>
<p style="text-align: right;">Page 9</p> <p>1 nurse is capable of being mobilized in 2 emergencies by the physician-side computer, 3 relay device, or other mobile terminals 4 possessed by the hospital personnel. So that's 5 the way it's described there in terms of being 6 mobilized. 7 Q. So does that mean capable of being 8 mobilized is that a physician-side computer can 9 send data to the mobile terminal and the mobile 10 terminal can respond, for example, in emergency 11 situations by adjusting the therapy of a 12 patient's PAP device? 13 MS. ALEXANDER: Objection; vague. 14 THE WITNESS: Yeah, if you have 15 a -- if you'd like to pinpoint the question just 16 a little more, I'd probably be easier able to 17 answer. 18 BY MS. FULLER: 19 Q. So in the context of being capable of 20 being mobilized, does that mean that the mobile 21 terminal can receive data, for example, from a 22 physician-side computer, and be able to adjust 23 the therapy of a patient's CPAP device? 24 A. In this section that's talking about 25 the mobile terminal, what it says is this is</p>	<p style="text-align: right;">Page 11</p> <p>1 reading from Paragraph 19, or are there other 2 paragraphs in the -- 3 Q. I'm just asking a general question, 4 not specific to Paragraph 19, just Toge in 5 general. 6 A. So yeah, it would be better if we 7 talked about a specific section in Toge. 8 Because it makes more sense to talk about the 9 interpretation of the specific text. 10 So in general, Toge -- and it says in 11 the abstract, enabling remote monitoring of the 12 patient's condition using -- during the use of a 13 positive pressure artificial respiration device, 14 or the condition of the positive pressure 15 artificial respiration assisting device. So the 16 positive pressure artificial respiration 17 assisting device requests treatment data on the 18 patient using the device and then transmits the 19 requested treatment data to the relay device via 20 a communication network. 21 The relay device receives the 22 treatment data transmitted from the positive 23 pressure artificial respiration assisting 24 device, and transmits all or part of the 25 received treatment data to the physician-side</p>

<p style="text-align: right;">Page 12</p> <p>1 computer, or mobile terminal via the 2 communication network. 3 The physician-side computer or the 4 mobile terminal receives all or part of the 5 treatment data transmitted from the relay 6 device. So that is in general what the Toge 7 reference is discussing. 8 Q. Does the Toge reference then solve the 9 problem of remote monitoring of the patients 10 during their CPAP therapy? 11 A. Are you referring to a specific 12 section in my declaration or in the Toge 13 reference? 14 Q. I'm referring to where we are looking 15 at the abstract and the problem addressed. 16 A. Okay. So in the Toge reference the 17 solution to the problem as it's stated here in 18 the abstract, and I'll abbreviate, the PAP 19 device requests treatment data on the patient 20 using the device and transmits the requested 21 treatment data to the relay device via 22 communication network. The relay device 23 receives the treatment data transmitted from the 24 positive pressure artificial assist or PAP 25 device, and transmits all or part of the</p>	<p style="text-align: right;">Page 14</p> <p>1 whoever has access to the data. So whoever 2 receives the data would be able to remotely 3 monitor. 4 Q. So whoever receives the data can 5 remotely monitor. So if we look at Figure 1, we 6 have a physician-side computer 4 that's able to 7 receive the data. So would that mean that a 8 physician or medical care staff would be 9 remotely monitoring? 10 A. So the physician-side computer, so in 11 Figure 1 -- in Figure 1 of Toge it describes the 12 physician-side computer. So therefore, that 13 would indicate that a physician or whoever is 14 receiving the data on behalf of a physician. So 15 a physician has the ability -- so in healthcare 16 the physician provides data or allows data to be 17 collected at the order of a physician. So if 18 the physician -- where it says there physician's 19 computer, it's based on a physician's order. 20 So if a physician is ordering the 21 data, it may be that his team, the people in the 22 healthcare team, the people that are part of 23 the -- in charge of looking after the data, and 24 whoever the physician allows to see that data, 25 that's one permutation of what the -- what's the</p>
<p style="text-align: right;">Page 13</p> <p>1 received treatment data to the physician 2 computer or mobile terminal via communication 3 network. The physician-side computer or mobile 4 terminal receives all or part of the treatment 5 data transmitted from the relay device. 6 So that's exactly what it says in the 7 solution to the problem in the abstract of the 8 Toge device. 9 Q. So I guess my question is, what is the 10 problem that Toge is solving? Is the problem 11 Toge is solving is the remote monitoring by a 12 physician during a patient's CPAP therapy 13 session? 14 A. So the problem is stated very clearly, 15 just in the sentence previously before. So 16 enabling remote monitoring of the patient's 17 condition during the use of PAP, or the 18 condition of positive pressure artificial 19 respiration assisting device. 20 Q. And the remote monitoring is done by 21 who? Is that done by a physician or the medical 22 care providers? 23 A. So remote monitoring would be done by 24 a number of different individuals, and if 25 there's a spot in the -- so it could include</p>	<p style="text-align: right;">Page 15</p> <p>1 data that goes to the physician-side computer 2 could represent. 3 Q. And then when we look at Figure 2 we 4 also see mobile terminal 5. Is mobile terminal 5 5 associated with the physician or, as you 6 testified to, anyone that the physician ordered 7 to see the data? 8 A. So the mobile terminal here, this -- 9 so you can see it's part of a network ring. So 10 if you look at the hours, the mobile terminal is 11 just connected to the network, as is the 12 physician's computer, as is the relay device and 13 the positive -- or the PAP device. That's in 14 Figure 1. 15 Q. So who is in possession of the mobile 16 terminal? Is that another physician or care 17 provider that is instructed -- has been 18 instructed to review the data from a physician? 19 A. So the mobile -- in Paragraph 19, the 20 mobile terminal is in the possession of a 21 physician or nurse -- when it's in the 22 possession of a physician or nurse, is capable 23 of being mobilized, as we said, by the 24 physician-side computer, relay device, or other 25 mobile terminals possessed by hospital</p>

<p style="text-align: right;">Page 16</p> <p>1 personnel. That's what it says. 2 Q. So a mobile terminal is in possession 3 of a physician or nurse; correct? 4 A. It says here or other mobile terminals 5 possessed by hospital personnel as well. 6 Q. So if we go to Paragraph 47 -- let me 7 know when you get there. 8 A. Okay. 9 Q. So this paragraph provides a concrete 10 example of adjusting the flow rate from the 11 oxygen -- adjusting the flow rate. Do you see 12 that? 13 A. Yes, I see that. 14 Q. So in this paragraph mobile terminal 5 15 is able to adjust the prescription pressure; is 16 that correct? 17 A. So Paragraph 47, which is referring to 18 operating status, especially in situations where 19 the mask detaches from a patient -- in the 20 section above says detected by the control unit 21 where the internal pressure of the mask does not 22 increase, even when the pressure -- when you're 23 trying to change the pressure, it says here, 24 when the rotation speed of the blower increases. 25 So by transmitting the operation status in</p>	<p style="text-align: right;">Page 18</p> <p>1 therapy in an emergency situation; is that a 2 correct understanding? 3 A. So again, I would refer to the exact 4 language in there. But in this case they have 5 described the physician changing the pressure 6 remotely. So changing the PAP pressure remotely 7 from either the physician-side computer or the 8 mobile terminal. 9 Q. In changing the patient's prescription 10 pressure remotely, such as in emergency 11 situations, does this allow for a fast response 12 to a patient's decrease in oxygen levels to 13 therefore remedy the patient's breathing? 14 MS. ALEXANDER: Objection; vague. 15 Calls for speculation. 16 THE WITNESS: Yeah, like I said, 17 this is an example that somebody has put in 18 here. So to make those calls, you would need to 19 be -- have more information about the clinical 20 condition of the patient that is being treated. 21 BY MS. FULLER: 22 Q. So in Paragraph 56, let's go to for an 23 example. Let me know when you get there. 24 A. Yes, I'm at Paragraph 56. 25 Q. So it says that an alert can be</p>
<p style="text-align: right;">Page 17</p> <p>1 realtime, physicians can address emergencies 2 involving the patient. So it gives you a 3 specific example there. 4 So by transmitting the oxygen 5 saturation measured by the oxygen saturation 6 monitor, almost in realtime or at regular 7 intervals physicians can almost instantly or 8 periodically know the patient's oxygen 9 saturation level. In this case then if the 10 oxygen saturation, for an example, if -- there 11 may be other examples, of course -- falls below 12 90 percent, physicians can take emergency 13 measures such as adjusting the prescription 14 pressure to a higher level remotely from the 15 physician-side computer or mobile terminal 16 operating the PAP device in conjunction with an 17 oxygen concentrator or adjusting the flow rate 18 from the oxygen concentrator if one is being 19 used in conjunction. 20 There's a following thing that says 21 additionally and alternatively that describes 22 additional information there as well. 23 Q. Okay. So based off of this paragraph, 24 regardless of the proximity to the patient, the 25 physician's mobile terminal 5 can adjust the</p>	<p style="text-align: right;">Page 19</p> <p>1 received by the physician-side computer and the 2 mobile terminal, making situation as an 3 emergency where the patient's breathing has 4 drastically decreased. Do you see that? 5 A. Yeah. It basically says here -- so 6 this section here is also related to -- so 7 the -- it goes all the way back to Paragraph 50, 8 and even before that, the configuration, 9 operation of the relay device from Paragraph 49 10 through to 62. When they're describing that 11 section, there's a lot more included than just 12 this one paragraph related -- this one paragraph 13 related to the information that you just asked. 14 However, you've asked about the specific 15 threshold levels, so -- for an alert. And is 16 there a specific -- could you repeat the 17 specific question? 18 Q. I guess my question is pointed to 19 where there's an emergency situation where the 20 patient's breathing has drastically decreased. 21 Does the Toge system then allow for the 22 physician's computer or mobile terminal to 23 quickly and rapidly respond to these emergency 24 situations to rectify the patient's breathing 25 issues, based off of what I'm pointing you to in</p>

<p style="text-align: right;">Page 20</p> <p>1 Paragraph 56, and as well as 47 that we were 2 discussing earlier? 3 A. Mm-hmm. 4 MS. ALEXANDER: Objection; vague. 5 THE WITNESS: So what it says 6 precisely is -- so related to the minute 7 respiratory rate, two lower thresholds can be 8 set. If the minute respiratory rate falls below 9 the smaller of the two lower threshold values, 10 the relay device can be configured to send an 11 alert to both or either of the physician-side 12 computer and the mobile terminal, making the 13 situation as an emergency where the patient's 14 breathing has drastically decreased. 15 So that's exactly what it says. And 16 additionally -- I don't know that there's 17 anything more that need to be included there to 18 answer that question. 19 BY MS. FULLER: 20 Q. When an emergency situation where the 21 patient's breathing has drastically decreased, 22 for example, where their oxygen level is below 23 90 percent, is that considered clinically 24 significant or harmful if not treated quickly? 25 A. There may be situations where somebody</p>	<p style="text-align: right;">Page 22</p> <p>1 example, threshold level of 90 percent, and they 2 just said, for an example. 3 Q. So in this example, a threshold level, 4 the patient is below the threshold level of 5 90 percent, that's considered an emergency 6 situation that needs to be responded to in this 7 example of Toge? 8 A. So again, 90 percent is an example and 9 it's not -- this 90 -- I'm just not asking -- 10 I'm just not sure whether you're asking me 11 whether a 90 percent threshold is a clinically 12 important number for any specific case, or if 13 you're just saying like for human, you know, 14 health and well-being would you choose a 15 90 percent threshold. 16 And what I was telling you is there 17 are some people who chronically live at an 18 oxygen saturation threshold below 90 percent. 19 So they're not well, they're chronically unwell, 20 but for individuals in that circumstance, an 21 emergency, you couldn't define an emergency 22 based on that 90 percent threshold because they 23 live with an oxygen saturation below that 24 threshold. So it would depend. 25 Q. So it's a patient-by-patient</p>
<p style="text-align: right;">Page 21</p> <p>1 has a chronic respiratory disorder where their 2 oxygen levels are below 90 percent due to 3 various lung conditions that don't permit them 4 to -- the exchange of gas to exceed 90 percent 5 without additional interventions, and CPAP, for 6 example, may not be the correct intervention. 7 So I think the question again relates 8 back to the clinical scenario where you have to 9 have the full clinical picture to determine 10 whether a response to somebody who has a very -- 11 like a single point measurement, you have to 12 take that into consideration to determine 13 whether it's the appropriate thing to do. 14 So they're using an example here, but 15 that example is only to say in that specific 16 situation where that is the correct response. 17 It doesn't say that that is always the correct 18 response. 19 Q. When you say they're using the 20 specific example here, is that the example -- is 21 that example the 90 percent threshold level, is 22 that what you're in reference to? 23 A. So a threshold could -- so as I 24 mentioned before, a threshold level is -- 25 they've said it here in Paragraph 57. For</p>	<p style="text-align: right;">Page 23</p> <p>1 circumstance; is that correct? 2 A. That's why in Toge they've used an 3 example. 4 Q. Can I direct you to -- staying within 5 the Toge exhibit, can we go to Paragraph 26. 6 I'll let you review that paragraph quickly and 7 let me know once you're done. 8 A. Okay. 9 Q. So in this paragraph Toge describes an 10 input device 28. Would a POSITA understand that 11 this input device includes a display screen? 12 MS. ALEXANDER: Objection; 13 outside the scope. 14 THE WITNESS: So in this case, 15 the -- it's described the input device right 16 there in that paragraph, and it says operated -- 17 the input device is operated by the patient or 18 the physician and consists of components 19 described here in this section, control panel, 20 input buttons, input terminals that are 21 detachable, for example, ventilation condition, 22 setters from the main unit, the input device 23 enables operation such as power, on/off mode, 24 selection, prescription pressure settings, 25 settings for minute breathing rate in various</p>

<p style="text-align: right;">Page 24</p> <p>1 modes. And also the values or modes set are 2 provided to the control unit of the control 3 device and stored in its internal memory. 4 That's what it describes in the Toge reference 5 in Paragraph 26. 6 Q. So a POSITA would understand that that 7 could also include a display screen? 8 A. So there very well could be a display 9 screen, or it may be -- it may not have display 10 screens. If this is a -- there's a number of 11 different configurations. But it could have a 12 display screen or it may not have a display 13 screen. 14 Q. When you say a number of different 15 configurations, how many configurations are 16 there? 17 MS. ALEXANDER: Objection. Calls 18 for speculation. 19 THE WITNESS: As I said, without 20 really doing the research, without doing 21 exactly -- you know, doing a device-by-device 22 comparison, you would have to look at all the 23 current device that are out there or were out 24 there at the time, and see and compare them head 25 to head.</p>	<p style="text-align: right;">Page 26</p> <p>1 without an interface? 2 A. So in both studies and in treating 3 individuals with various sleep disordered 4 breathing conditions. 5 Q. Do you recall any CPAP machines that 6 do not have a display interface? 7 A. So again, I believe there are devices, 8 CPAP devices that do not have sleep -- that have 9 display graphic interfaces, and that the types 10 of -- again, I wouldn't be able to recall the 11 exact brand, model, or name, or number. 12 The other thing is here we're talking 13 about PAP devices. So there are devices and 14 were devices that you can switch between CPAP or 15 other modes. So I'm sure that the 16 configurations would include CPAP that did not 17 have -- and it even says it here, CPAP mode -- 18 CPAP that did not have a graphic interface. 19 Q. Let's turn to Paragraph 27. I'll give 20 you a minute to read that, and let me know once 21 you have read that paragraph over. 22 A. Okay. 23 Q. So that paragraph, it says that the 24 prescription pressure is set by the physician, 25 and only can be adjusted by a password to</p>
<p style="text-align: right;">Page 25</p> <p>1 BY MS. FULLER: 2 Q. Are there configurations where devices 3 do not include a display screen? 4 A. I have seen devices that do not have a 5 display screen. 6 Q. And what devices -- do you recall what 7 were those devices? Do you have -- 8 A. So -- 9 MS. ALEXANDER: Objection; 10 relevance. Sorry. 11 THE WITNESS: So one of the 12 devices that I would have used when I was in the 13 hospital -- I couldn't recall the exact name, 14 but I know it had a panel, and we would be able 15 to change settings via dials and buttons and 16 toggle switches and other related kind of 17 setting of switches and buttons that would 18 change the settings in various -- into either 19 various modes, levels of pressure, et cetera. 20 So I just know that there are devices 21 both with and without. The word that you used 22 was interface or display interface. 23 BY MS. FULLER: 24 Q. You are recalling in your clinical 25 setting, is that correct, that you used devices</p>	<p style="text-align: right;">Page 27</p> <p>1 prevent the patient from setting incorrect 2 values. 3 Based off of that passage, is the 4 password then only known to the physician or 5 other medical staff? 6 MS. ALEXANDER: Objection; 7 relevance. 8 THE WITNESS: So I just don't 9 know what the -- how the physician stores their 10 password. 11 BY MS. FULLER: 12 Q. Is it the physician's password, then, 13 that is used for setting the prescription value? 14 A. So again, I don't know the specific 15 configuration here of how the password is set or 16 how the physician allows for the password to be 17 used. 18 Q. Is it the physician's password, 19 though; is that a correct understanding? 20 A. So in this case it is configured that 21 the settings can only be adjusted after entering 22 a password. And it doesn't say whose password 23 it is. Now -- so how the physician allows for 24 the use of the password is not written here. 25 Q. So you don't have an understanding of</p>

<p style="text-align: right;">Page 28</p> <p>1 who the password belongs to, whether it's a 2 physician or another medical staff? 3 MS. ALEXANDER: Objection; 4 relevance. Calls for speculation. 5 THE WITNESS: So in this -- it 6 does not describe in here who has the password. 7 BY MS. FULLER: 8 Q. But in this paragraph, the 9 prescription pressure is set by a physician or a 10 nurse following the physician's instructions. 11 So only when a physician provides an order or 12 prescription can that therapy be set; is that 13 correct? 14 MS. ALEXANDER: Objection; vague. 15 THE WITNESS: So I understand the 16 question, and the question goes to any medical 17 therapy. So when you're prescribed a treatment, 18 a licensed physician or somebody licensed with 19 the ability to provide that therapy -- and there 20 are certain circumstances where, for example, a 21 nurse practitioner is able to provide a 22 prescription for certain things. There are 23 other medical or healthcare professionals who 24 are able to provide certain therapeutics, 25 depending on the scenario.</p>	<p style="text-align: right;">Page 30</p> <p>1 the hospital stay, and the patients don't 2 receive a benefit after they leave the hospital. 3 So it might be transient. 4 And then, you know, push that on to 5 the scenario where somebody receives chronic 6 care and they are required to have follow-up for 7 that treatment outside of a clinic, outside of a 8 diagnostic laboratory, for example. 9 BY MS. FULLER: 10 Q. So based off your testimony, then, is 11 it then a correct understanding that the 12 prescription pressure that is ordered by a 13 physician then would be adjusted by either a 14 physician or other personnel such as a nurse 15 using the password? 16 MS. ALEXANDER: Objection. 17 Mischaracterizes his testimony. 18 THE WITNESS: So that wasn't what 19 I had said. When it came to describing the 20 exact -- the exact description in Toge about how 21 the password is used, or -- it basically says 22 here that a physician or a nurse -- so the 23 prescription pressure and ventilation or 24 breathing rate values are set on the input 25 device by a physician or a nurse following the</p>
<p style="text-align: right;">Page 29</p> <p>1 So you know, I don't want to describe 2 every scenario, but mostly a licensed healthcare 3 professional provides some treatment, and that 4 treatment is to be delivered under their order 5 and under their supervision. So they are 6 responsible for that therapy. And it goes to 7 the necessity for the therapy and it goes to the 8 healthcare settings in which that's provided. 9 So, for example, in a hospital setting it might 10 be different practice scenarios than in private, 11 or in general -- in general healthcare or 12 community-based healthcare. 13 So the configuration about how the 14 healthcare professional provides that therapy, 15 who is the responsible person, how it's 16 delivered, how it's -- you know, whether the 17 person who is receiving the prescription has to 18 pick that prescription up, or whether the 19 prescription is delivered to them, or given to 20 them. Is it given to them at the point of care, 21 or is it something that they receive afterwards? 22 You know, in some circumstances, for 23 example, relevant to what we're talking about 24 here, there are therapies that are prescribed in 25 the hospital setting that are only used during</p>	<p style="text-align: right;">Page 31</p> <p>1 physician's instructions. 2 However, to prevent the patient from 3 setting incorrect values, it is configured such 4 that the settings can only be adjusted after 5 entering a password. So that's what it says 6 there. 7 And also, if you want to continue, it 8 says alternatively, settings can be adjusted by 9 the physician using a separate input terminal 10 and can be detached from the main unit. 11 Additionally, as mentioned earlier, settings can 12 also be configured via a communication network 13 through the physician-side computer or a mobile 14 terminal. 15 BY MS. FULLER: 16 Q. So based off of this paragraph, the 17 settings can be adjusted by a physician or a 18 nurse using the input device, or alternatively a 19 separate input terminal, or the physician's 20 computer or mobile terminal; is that correct? 21 MS. ALEXANDER: Objection; vague. 22 THE WITNESS: So in this 23 paragraph it says the prescription values are 24 set using the input device by a physician or a 25 nurse following the physician's instructions.</p>

<p style="text-align: right;">Page 32</p> <p>1 And there are a number of configurations about 2 the where and how that's the input device. So 3 it can be a terminal, it can be detached from 4 the main unit, it can be also configured via 5 network, communication network, or through the 6 physician-side computer or mobile terminal. 7 MS. FULLER: We've been going for 8 about an hour on the record. Let's go off the 9 record. Let's take a quick 5-minute break, 10 Dr. Kirkness, and let's return at my 1:00 p.m. 11 Eastern, I think your 10:00. 12 THE WITNESS: Okay. Thank you. 13 (9:55 a.m. PST - Recess taken.) 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 34</p> <p>1 form factor? 2 A. So form factor would probably be the 3 volumetric footprint, just in general. I'm sure 4 it has other meanings. It could be flatter or 5 it could be -- you know, could be slimmer, could 6 be smaller. You know, various form -- I guess 7 form would be just the shape and dimensions, and 8 the factor would just probably be all of the 9 combinations of those things. So, for example, 10 you might want it to sit comfortably on a 11 bedside table, for example, for an at-home PAP 12 device. So various configurations of PAP 13 devices would be better suited to that 14 application. So that would be the most simple 15 and obvious related to this discussion. 16 Q. So you would have reduced the PAP 17 device's form factor such as size then, by not 18 needing to include a screen suitable for 19 displaying data to the patient; is that correct? 20 A. So, in this regard. So if, for 21 example, that you wanted to be able to change to 22 make it smaller, or make it more adaptable for 23 some other purpose -- I mean, there's a whole 24 string of things that you could possibly think 25 of. But if you just wanted to make it, in</p>
<p style="text-align: right;">Page 33</p> <p>1 (At 10:00 a.m. PST, with parties 2 present as before, the following proceedings 3 were had, to-wit:) 4 BY MS. FULLER: 5 Q. I want to direct your attention now to 6 Exhibit 1071, which is your declaration. I 7 believe you have it in front of you, but let me 8 know. 9 A. Yes. This is Declaration, Jason 10 Kirkness in Support of Petitioner's Opposition 11 to Patent Owner's Contingent Motion to Amend and 12 Request For Preliminary Guidance. 13 Q. Perfect. You have the right one. 14 A. Thank you. 15 Q. Can we go to Paragraph 7 of your 16 declaration. It's a long paragraph so I'll just 17 direct you to where I want to ask some 18 questions, which is beginning at the sentence, 19 Additionally, said modification would have 20 reduced the PAP's device form factor. I'll let 21 you quickly review that and then let me know 22 once you're ready. 23 A. Okay. 24 Q. When you say reduce the PAP device's 25 form factor, I guess what is your meaning of a</p>	<p style="text-align: right;">Page 35</p> <p>1 essence, simpler, that then any of the toggle 2 related or buttons or any slide switches, 3 anything that you interacted with a patient -- 4 that a person would use in order to make those 5 changes, that what you would do is you could 6 have those in an external device, such that if 7 they were remote, then it would make it easier 8 for you to make those changes. 9 Now, sometimes you may want to keep 10 those, for example, on the PAP device in some 11 way, but expand the options in -- for example, 12 in a sleep lab setting. So in a sleep lab 13 setting you would use a device next to the bed 14 that's going to treat the patient and a 15 technician would be able to make various changes 16 in order to optimize a treatment. 17 Q. You say a physician can make various 18 changes to optimize treatment. Are they doing 19 it to the device itself physically or are they 20 at a remote location making those adjustments? 21 MS. ALEXANDER: Objection; vague. 22 THE WITNESS: So I understand the 23 meaning of the question, and the question is 24 where could you make changes, would it be at the 25 device or remotely, or at a distance. And the</p>

<p style="text-align: right;">Page 36</p> <p>1 answer is both. So there are devices that you 2 can make configuration changes at the patient's 3 bedside, for example, and there are changes that 4 can be made remotely via a configuration that 5 allows for remote control of the patient's 6 settings. And it depends on which settings that 7 are being changed. 8 BY MS. FULLER: 9 Q. When you say it depends on which 10 settings are being changed, can you elaborate 11 more on that? 12 A. Yes. 13 Q. Are you talking about like the therapy 14 settings versus just features of the device? 15 MS. ALEXANDER: Objection; vague. 16 THE WITNESS: Correct. So my -- 17 I discuss this in my declaration, and indeed it 18 relates specifically to the section in which I 19 described on Page 7 and Page 9 relating to the 20 Toge reference in view of Kumar that renders 21 obvious in the section here that -- renders 22 obvious that wherein the therapy administered by 23 the CPAP, or PAP or CPAP devices configured to 24 be adjusted by the first software of the 25 subject's cellular phone.</p>	<p style="text-align: right;">Page 38</p> <p>1 have a look, and be able to control their device 2 at the comfort whilst they're using their 3 device. 4 Q. Are these settings able to be adjusted 5 on the PAP device itself? 6 A. So they may be. As I said, some PAP 7 devices have different features. So there would 8 be multiple features that you would have to 9 understand what those PAP features are. But 10 anything that I -- a patient would be authorized 11 or able to do for their own benefit or their own 12 comfort, it would make sense for that to be 13 included. 14 Q. So going back to Paragraph 7 of your 15 testimony, declaration testimony, you reference 16 Exhibit 1056 as evidence for it was known by at 17 least 2002 that making a smaller and less 18 expensive PAP device is easier to use. 19 A. Mm-hmm. 20 Q. And the PAP device that is referenced 21 in 1056 is an AutoSet T. Are you aware whether 22 that AutoSet T had a user interface, or if it 23 didn't -- was -- did not have a user interface? 24 A. I don't know. I would have to look at 25 the specifications of that AutoSet T.</p>
<p style="text-align: right;">Page 37</p> <p>1 But in that section I describe in 2 detail how somebody would be motivated to 3 incorporate the patient's cell phone that 4 adjusts a PAP therapy into Toge's PAP system as 5 we've discussed, or a number of scenarios which 6 result in advantages like proximity, 7 consistency, response time. And then moreover, 8 a patient having the ability to adjust allowable 9 parameters. And this is where I separate the 10 therapy from that which a patient would be 11 allowed to modify. 12 BY MS. FULLER: 13 Q. What paragraph are you separating 14 paragraph from allowable? 15 A. Yeah, so in Paragraph 18 on page -- 16 Paragraph 18. Moreover, patients have the 17 ability to adjust allowable parameters on their 18 cell phone as opposed to the therapy. So 19 allowable parameters as opposed to PAP. So this 20 creates increased convenience for the patient 21 such as if they wanted to change the current 22 allowable settings, or the allowable settings 23 like ramped features, like on/off -- you know, 24 there's on/off settings, things like that, to 25 allow a patient to be able to lie in their bed,</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Okay. So for purposes of your use of 2 Exhibit 1056, it was just to show that it was 3 known by at least 2002 to make smaller devices? 4 A. So indeed, I would say that the -- it 5 doesn't just say that in my declaration. It 6 says there, for example, it's using an example 7 as we would say about the form factor, which 8 would not need to include a screen suitable for 9 displaying the patient's data. That's one 10 thing. 11 And also the other thing here it says 12 not just making it smaller, but it also says 13 here, making it less expensive. So that's 14 another reason that you might change the form 15 factor, making it less expensive, resulting in 16 cheaper therapy for patients. 17 Q. So in 2002 you were not aware, though, 18 of any CPAP machine that had their user 19 interface removed from their device? 20 MS. ALEXANDER: Objection. 21 Mischaracterizes his testimony. 22 THE WITNESS: Yeah, I'm not -- 23 the question seemed like it was -- can you 24 restate the question? 25 BY MS. FULLER:</p>

<p style="text-align: right;">Page 40</p> <p>1 Q. I guess my thing is probably moving on 2 from the previous question, that in 2002 were 3 you aware of any CPAP device or PAP device that 4 had the user interface removed? 5 A. So I can tell you the scenario in 6 which -- and the scenario, I'm not talking about 7 a specific CPAP device, okay. So I'm talking 8 about the scenario which CPAP devices, more than 9 one, were being used in a way that did not have 10 the use -- or did not use a screen on the 11 device. Because they were networked in the 12 sleep lab in order to be able to remotely 13 control the device. 14 Q. And then the sleep networks who 15 remotely control the device, who is remotely 16 controlling the device? Is it the physician or 17 a healthcare provider? 18 A. So in the scenario that I was 19 describing or discussing, the device was in use 20 during sleep. So I think that would preclude a 21 patient using that at the time that they were 22 asleep. They were using the PAP device. 23 Now, the scenario that I was talking 24 to you about before, about interfacing with a 25 device, we're talking -- so allowable settings</p>	<p style="text-align: right;">Page 42</p> <p>1 breathing, and changing the pressure in response 2 to witnessed events. 3 Q. Can we move to Paragraph 12 of your 4 declaration. I'll let you get reacquainted with 5 that paragraph and let me know when you're done. 6 A. Okay. 7 Q. So in this paragraph you opine that a 8 POSITA would have been motivated to incorporate 9 Kumar's Remote Internet Site with Toge's PAP 10 system. Do you propose how this incorporation 11 would be done in this paragraph or anywhere else 12 in your declaration? 13 A. So in this paragraph specifically I'm 14 talking about why it would be done, and that it 15 would be that Toge -- Toge -- sorry, Kumar 16 discloses telemedicine system for networking 17 based on monitoring of physiological data. So 18 that has the -- that has a subject side device 19 that connects to any either diagnostic or 20 treatment device that collects physiological -- 21 physiologically relevant data, and then 22 including -- so the system also includes patient 23 device, computing device, wireless phone, 24 central server that hosts a browser-based engine 25 that could be accessed through web pages.</p>
<p style="text-align: right;">Page 41</p> <p>1 of changing would have to -- if they were being 2 done or were being performed from a device that 3 was in the -- which was attached to the CPAP 4 device and part of the CPAP's device that was 5 owned by the patient in a home setting, a 6 patient wouldn't be changing the therapy while 7 they're asleep or changing their settings while 8 they're asleep, their allowable settings. 9 A patient would only be making 10 changes, reviewing or looking at their own data 11 whilst they're awake. So -- because they just 12 can't interact with a device while they're 13 asleep. 14 So if you're talking about changing 15 therapy settings whilst the therapy is being 16 used, those changes would not be being done if 17 they're being reviewed online. They would not 18 be being done by a person who was asleep. They 19 would be being done by a person who was awake 20 and monitoring those. If they were being done 21 after the fact, that could be done by anyone in 22 the team. 23 So we're talking about the scenario in 24 2002 where a patient is sleeping in a sleep lab 25 and you're remotely monitoring their sleep and</p>	<p style="text-align: right;">Page 43</p> <p>1 So that describes briefly how, and 2 that's included in Section 11. 3 Q. So is it then your how -- if this is a 4 correct understanding, the how of being 5 incorporated is are you just proposing that you 6 would incorporate Kumar's web server 7 infrastructure, then, in Toge's system? 8 A. So again, there is a communication -- 9 there's basically a communication network. And 10 the communication network, for example, could be 11 an Internet and intranet, as described 12 previously in Toge that could include a central 13 server or a computer, a computing device, and a 14 central server that hosts a web browser-based 15 engine that could be accessed. And in doing 16 that, you can access the data -- so Kumar 17 describes this, but also Toge describes it -- 18 data from a PAP device. And that PAP device can 19 be used in order to treat sleep disorders. 20 Q. So because Toge discloses a 21 communication network where data is transferred 22 via the Internet, you opine then a central 23 server could be used in Toge's system; is that 24 correct? 25 MS. ALEXANDER: Objection;</p>

<p style="text-align: right;">Page 44</p> <p>1 mischaracterizes his testimony. 2 THE WITNESS: Could you repeat 3 the question? 4 BY MS. FULLER: 5 Q. Was it correct that you were 6 testifying that Toge discloses a communication 7 network with the use of an Internet; is that 8 correct? 9 A. So I -- so Toge -- what I said was 10 Toge describes -- and I could go back to that if 11 you'd like. Toge, in Figure 1, the 12 communication -- sorry, in Figure 1, 13 communication may be any of a public telephone 14 network, the Internet, and mobile communication 15 network, or a dedicated line network 16 alternatively, could be combinations of these 17 networks. And that's in Paragraph 9 of the Toge 18 reference. 19 Q. And then based off of this paragraph, 20 is it your opinion then that a POSITA would 21 implement a -- I think what you classified 22 Kumar's structure as, as a central server? 23 MS. ALEXANDER: Objection; 24 mischaracterizes his testimony. 25 THE WITNESS: Would you mind</p>	<p style="text-align: right;">Page 46</p> <p>1 device and the provider-side device. The engine 2 manages transmission of the data from the 3 patient-side device to the provider-side device. 4 That's in broad strokes. If you want to dig 5 into the Kumar reference where it describes 6 more, we could read through it and -- to 7 describe any one of those features. 8 Q. I'm just trying to understand how, 9 based off of Kumar's teaching, are you opining 10 that there would be incorporation in Toge's 11 system. Like what are you incorporating from 12 Kumar into Toge's system? 13 A. So there are multiple -- sorry, there 14 are multiple paths of Kumar that are described, 15 as I just said. On Figure 1 there are -- it 16 describes here medical instrumentation, or other 17 devices. Wired or wireless. There is the -- 18 you can see the various communication with 19 protocol-dependent device managers, graphical 20 displays, data interpretation and analysis, 21 streaming manager with remote control, 22 audio/visual messaging, all communicating with 23 the Internet. 24 There's some specific network 25 processes for streaming realtime data to</p>
<p style="text-align: right;">Page 45</p> <p>1 repeating the question? 2 BY MS. FULLER: 3 Q. So Paragraph 9, you state that 4 there's -- a communication network may be any of 5 a telephone network, Internet, and mobile 6 communication network; correct? 7 A. So that's what it says in Paragraph 9. 8 Q. And you were testifying earlier that 9 because there's a use of the Internet in Toge, a 10 POSITA then would have recognized that Kumar's 11 central server could be implemented in Toge? 12 A. So that, Kumar -- Kumar and -- shall 13 we turn to the Kumar reference to determine 14 exactly what they say about that? 15 Q. If you have it in front of you, you 16 can pull it out and take a look. 17 A. Okay. So I think the abstract 18 describes it in its most simple terms. So 19 system and method are provided for network-based 20 monitoring of physiological data. At least one 21 patient-side device collects the physiological 22 data from the patient. A provider-side device 23 receives the data from at least one patient-side 24 device via a wide-area network. The engine 25 communicates with at least one patient-side</p>	<p style="text-align: right;">Page 47</p> <p>1 multiple clients, data storage and data 2 retrieval. Websites for user registration, user 3 management, messaging, intake forms. And then 4 there are individual devices with graphical 5 displays, streaming and remote controls, audio 6 visuals, all connected centrally to 7 communication networks. 8 So there is a number of specific 9 sections there, and if any one of those you 10 wanted me to describe from the Kumar reference 11 in greater detail, let me know. 12 Q. Well, let's go back to Paragraph 12 of 13 your declaration to have it more pointed. You 14 say a POSITA would have been motivated to 15 incorporate Kumar's Internet Remote Site with 16 Toge's system. 17 So based off of this paragraph, is it 18 your opinion that the POSITA would have 19 incorporated Kumar's Remote Internet Site as a 20 standalone structure in Toge's system? 21 A. So a person of ordinary skill in the 22 art would see -- and I say it here, I'm talking 23 about the motivation there that's sort of why 24 people would do it. And you're asking me what. 25 So the Kumar discloses a telemedicine system,</p>

<p style="text-align: right;">Page 48</p> <p>1 which is for network-based monitoring of 2 physiological data. So as I've showed you there 3 and described, the system that includes a 4 patient-side device, computing device like a 5 wireless and central server that hosts a web 6 browser engine, that can be accessed through web 7 pages. 8 So the system includes one or more 9 patient-side devices for collecting data from 10 patients, clients, one or more provider-side 11 devices, and an engine implemented on a central 12 server. So they are the features of the Kumar 13 telemedicine system that in combination with 14 Toge disclosed that a Remote Internet Site 15 hosted on at least one server that receives 16 quantified level of severity data would be 17 implemented in to achieve. 18 Q. So your proposal is implementing 19 Kumar's Remote Internet Site, which includes the 20 features you just testified to into Toge's PAP 21 system; is that correct? 22 A. So I -- Toge's system -- Toge 23 describes, as we've already described this as 24 well, but in the abstract of Toge it describes 25 the positive pressure artificial respiration</p>	<p style="text-align: right;">Page 50</p> <p>1 websites and deliver the data via central 2 server, all right, an engine implemented on a 3 central server would be adapted upon. 4 Q. Kumar's central server, that hosts a 5 web browser engine; is that correct? 6 A. So can you point me to the part of 7 Kumar where you're extracting that information 8 from? 9 Q. So, for example, in Paragraph 69 it 10 talks about engines/central servers. So my 11 question then to you is that does an engine then 12 run on a central server in Kumar? 13 A. So in 69 -- in the paragraph that 14 you -- Kumar, the embodiments presented herein 15 contemplate connection of multiple patient-side 16 devices, provider-side devices, and engines, 17 central servers -- and engines/central servers. 18 Because of a plurality of devices and engines 19 may be in operation, the system may be capable 20 of networking the numerous devices and/or 21 engines into individual, group, clinic, 22 hospitals, or other electronic record systems. 23 For simplicity and discussion, what 24 they are describing here is a system having a 25 single patient-side device, provider-side</p>
<p style="text-align: right;">Page 49</p> <p>1 assisting device, which requests treatment data 2 on the patient using the device, and transmits 3 the requested treatment data to the relay device 4 via communication network. 5 The relay device receives the 6 treatment data transmitted from the PAP device 7 and transmits all or part of the received 8 treatment data to the physician-side computer or 9 mobile terminal via a communication network. 10 The physician-side computer mobile terminal 11 receives all or part of the treatment data 12 transmitted from the relay device. 13 So therefore, you've described -- Toge 14 describes almost everything about the PAP 15 device, how it's used, who uses it, the various 16 configurations of mobile terminals, and relaying 17 and communicating. It describes the 18 configurations as I've mentioned before, 19 communication networks, any configuration of a 20 telephone network, Internet mobile 21 communication. It also may be a combination of 22 all of those as well. 23 So that is the system that the Kumar 24 system, which I described being able to take the 25 data and display those through the various</p>	<p style="text-align: right;">Page 51</p> <p>1 device, and an engine or a central server, being 2 understood that one of ordinary skill in the art 3 would be able to use the system with multiple 4 devices connected without undue experimentation. 5 So they're describing an engine as being 6 implemented on central server. 7 Q. And is an engine a browser-based 8 engine then that's implemented on a central 9 server? 10 A. So in this case the engine in which 11 they're describing would be -- so the engine 12 would be the software. And once again, I just 13 want to make clear that when it comes to the 14 description of software servers, hosting 15 software, and all things about that, I'm not a 16 computer scientist, nor electronic engineer. So 17 therefore, the way that I understand these 18 things is as a user, not as an implementer or 19 designer. 20 So the way that I interface with 21 these -- this kind of technology as the person 22 who would be operating it as a clinician or as a 23 healthcare provider or as a researcher, and that 24 in terms of describing how an engine is 25 implemented on a server, this would not be my</p>

<p style="text-align: right;">Page 52</p> <p>1 core -- what I would say as my core competency 2 to implement server software and describe to you 3 in detail how that is. 4 With that limitation, I understand 5 that the computers can operate various software 6 that can be used in order to distribute, 7 receive, or transmit various data. So 8 therefore, when they talk about an engine, my 9 understanding is that the engine is the 10 software, and the configuration of how the 11 computing power achieves its goal. 12 Q. So as a user, you would be on the 13 client browser end that is interacting with the 14 engine; is that correct? 15 A. Maybe, maybe. Also, as a -- if I was 16 a user, I might be working with configuring 17 various settings of an engine that might 18 expedite or optimize a workflow. 19 Q. What do you mean, like a workflow of 20 how -- as a user such as a clinician, of how 21 they receive the patient data, is that what you 22 mean by workflow, or -- 23 A. I would describe workflow as the 24 various steps in setting up to -- everything 25 from how data is collected all the way to how</p>	<p style="text-align: right;">Page 54</p> <p>1 mentioned this previously, that -- and we've 2 actually walked through a number of these 3 elements as well. So yes, it's my opinion that 4 it would have been obvious to -- that Toge, in 5 view of Kumar, would render that limitation 6 obvious. 7 Q. And a basis of your opinion for that 8 it would have been rendered obvious, is it 9 correct that you are testifying that because 10 Toge already discloses a physician's mobile cell 11 phone adjusting the therapy, that it would have 12 been obvious then to modify Kumar's patient's 13 cell phone to adjust the therapy? I'm looking 14 at Paragraph 16 of your declaration. 15 A. Yes, so -- and it says it here in the 16 last sentence, so this is my opinion, that a 17 POSITA would have found it obvious to implement 18 that functionality, so PAP adjustment, on the 19 software of the patient's cell phone to achieve 20 the benefits that we discussed earlier in this 21 deposition. 22 Q. So in rendering this opinion, you're 23 looking at Toge's teaching of the physician's 24 cell phone to therefore say it would have been 25 obvious for Kumar's patient cell phone to adjust</p>
<p style="text-align: right;">Page 53</p> <p>1 it's used -- used, interpreted, analyzed, 2 calculated, you know, displayed, reported. The 3 various steps along the way, who sees the data, 4 for what purpose. 5 Q. So let's turn to paragraph -- well, 6 let's just turn to Section C of your declaration 7 that's paragraphs 14 through, I believe, 20. 8 I'll ask some questions, and if you need a 9 little time reviewing specific passages, we can 10 take the time. But just to get a correct 11 understanding of your testimony in this section, 12 is it your opinion that neither Toge or Kumar 13 disclose the limitation wherein the therapy is 14 administered by the PAP or CPAP device, is 15 configured to be adjusted by the first software 16 on the patient's cellular phone? 17 A. So it is my opinion that Toge, in view 18 of Kumar, renders this limitation obvious. 19 Q. Obvious. So neither disclosed the 20 limitation, but what you're opining on is that 21 it would have been obvious to a POSITA; is that 22 correct? 23 A. So as I've discussed in Section 15, 24 16, 17, 18, 19, and 20, and we touched on some 25 of that previously as well, and I basically</p>	<p style="text-align: right;">Page 55</p> <p>1 the therapy; is that correct? 2 A. So it's my opinion that someone would 3 have put -- a POSITA would have found it obvious 4 to configure the software on Kumar's 5 patient-based cell phone to adjust the therapy 6 administered by the PAP. So -- and Toge already 7 shows that a cell phone can be used by a 8 physician having the capability to adjust the 9 therapy. 10 Q. Okay. I'm going to direct you to 11 Paragraph 17 of your declaration testimony. So 12 in that paragraph you say: A physician who has 13 analyzed and/or reviewed the patient's PAP data 14 could mobilize the patient's cell phone to 15 adjust the prescription pressure. 16 What do you mean by mobilize in this 17 context? 18 A. So in this scenario mobilized means 19 could use, so, for example, a physician who has 20 analyzed or reviewed a patient's PAP data could 21 engage with, use, connect to the patient's cell 22 phone to adjust the prescription pressure for a 23 patient's future PAP session. 24 Q. Are you using mobilize in the same 25 context that Toge uses it in Paragraph 19 that</p>

<p style="text-align: right;">Page 56</p> <p>1 we were touching base on earlier? We can go to 2 Toge's Paragraph 19. 3 A. You said Paragraph 19? 4 Q. 19, where it says the mobile terminal 5 5 is capable of being mobilized. 6 A. So the terminal in the possession of a 7 physician or nurse is capable of being mobilized 8 in emergencies by the physician-side computer 9 device or other mobile terminals possessed by 10 hospital personnel. Furthermore, medical 11 institution personnel can operate the mobile 12 terminal to set the necessary data. 13 So in this regard, so is capable of 14 being mobilized. So mobilized in that scenario 15 can be used to say, used, it can be used to say 16 it is moved, it is -- yeah, so I agree that the 17 use of that word mobilized in this scenario 18 includes both the use of physically moving it, 19 whereas in the case where a mobile device, so a 20 mobile device is being used while it's not 21 mobile. So I think we described that earlier as 22 well, that just because something is mobile it 23 doesn't mean that it has to be mobile. 24 Q. Meaning that I could be sitting here 25 using my computer or a mobile device and I'm not</p>	<p style="text-align: right;">Page 58</p> <p>1 its mobile terminal, is that it's being 2 mobilized in emergencies. So I'm trying to 3 understand, in emergencies in Toge's context, 4 those emergencies are described, for example, in 5 Paragraph 47; correct? We can go to 6 Paragraph 47. 7 A. All right, I'm at 47. 8 Q. So in this instance it says that 9 physicians can take emergency measures such as 10 adjusting the prescription pressure to a higher 11 level remotely from either the physician-side 12 computer or mobile terminal 5. So would this 13 then encompass the situation of the mobile 14 terminal being mobilized in an emergency? 15 A. So again, in this scenario it does 16 not -- it does not say whether -- it does not 17 say whether -- it says it's being used in this 18 scenario. It does not say whether it's being -- 19 it's put in motion, let's put it that way. 20 Q. So in this scenario the mobile 21 terminal is being used to adjust the 22 prescription pressure in an emergency situation; 23 is that correct? 24 A. So it -- basically it says -- it says 25 that the pressure in the device is being</p>
<p style="text-align: right;">Page 57</p> <p>1 mobile, like, I'm not moving it but I'm still 2 using it? Is that what you're referring to? 3 A. That is correct. Or you can -- you 4 could sit -- you could sit and use a device and 5 press a button in order to create the 6 circumstance where something is -- like a 7 procedure is being done as well. So it's 8 capable of being mobilized in emergencies. So 9 used -- and in this term, it can be both. It 10 can be being used in emergencies or it could be 11 both moved in emergencies. 12 Q. And in emergencies in Toge's context, 13 those emergencies are described throughout the 14 various paragraphs in Toge; correct? For 15 example, Paragraph 47 talks about an emergency 16 situation. And that situation is where the 17 mobile terminal would be mobilized to be either 18 used or moved to address that emergency 19 situation; is that correct? 20 MS. ALEXANDER: Objection; vague. 21 THE WITNESS: Yeah, could you 22 repeat the question? 23 BY MS. FULLER: 24 Q. Well, you say mobilized in 25 emergencies. That's what Toge is teaching about</p>	<p style="text-align: right;">Page 59</p> <p>1 adjusted to a higher level remotely from one of 2 the devices that are described there. So 3 this -- the key thing here is that it could 4 happen remotely. And then whether it occurs 5 while somebody is running around or whether the 6 thing that they're using to change that pressure 7 is in motion is not described in that section. 8 Q. So then going to Paragraph 18 -- and I 9 think you spoke briefly to this a little bit 10 earlier on in your deposition testimony. You 11 state: A patient having the ability to adjust 12 allowable parameters on their cell phone. So 13 these allowable parameters are not prescription 14 therapy; is that correct? 15 A. So I believe what I testified to -- 16 what I testified to is captured in Paragraph 18, 17 and the essence is that only a patient -- a 18 patient would only have the ability, or a 19 patient, to make modifications to their therapy 20 within the allowable ranges. So what those 21 allowable ranges are would be determined by the 22 physician and the healthcare providers allowed 23 instructions, and the features related -- so if 24 we're talking about CPAP, the features related 25 to that -- the treatment that they're receiving.</p>

<p>1 Q. And then going back to your clinical 2 trial testimony where adjustments are being made 3 remotely during the use of the CPAP machine that 4 signifies that the remote adjustments are by a 5 physician because as a patient using the CPAP 6 machine, they are asleep; is that correct? 7 A. So in the scenario where a therapy 8 adjustment -- and let's distinguish feature from 9 therapy, features being allowable and therapies 10 being controlled by the physician. So in the 11 case where therapy is being adjusted under the 12 order of a physician during a patient's 13 sleeping, this -- and this would require a 14 trained healthcare provider to make those 15 changes, or somebody who is operating under the 16 orders of a physician. So where the remote 17 control is being physically changed or changed 18 during a patient's diagnostic or sleep study, 19 for example. 20 MS. FULLER: We've done about 21 another hour on the record. So Ms. Rooney, 22 let's go off and let's return here in ten 23 minutes. So let's just round it up to 2:10. 24 THE WITNESS: Okay, thank you. 25 (10:58 a.m. - Recess taken.)</p>	<p>Page 60</p>
<p>1 (At 11:11 a.m. PST, with parties 2 present as before, the following proceedings 3 were had, to-wit:) 4 MS. FULLER: Dr. Kirkness, thank 5 you for your time today. I have no further 6 questions. 7 MS. ALEXANDER: I have no 8 questions. 9 COURT REPORTER: (Requests orders 10 for the record.) 11 MS. FULLER: Standard turnaround 12 and rough draft. 13 MS. ALEXANDER: Standard, rough. 14 (11:12 a.m. PST - Adjournment.) 15 ** ** ** ** 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 61</p>

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