

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.,
Petitioner,

v.

CLEVELAND MEDICAL DEVICES, INC.,
Patent Owner.

Case IPR2025-00246
U.S. Patent No. 11,857,333

**PATENT OWNER'S AUTHORIZED REPLY TO
ITS MOTION TO TERMINATE**

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This proceeding should be terminated because Petitioner omitted its parent, ResMed, Inc., as a RPI in this proceeding, and rectifying this omission would make this Petition time-barred under 35 U.S.C. § 315(b). Petitioner's Opposition misstates the law, ignores key facts, and concocts pretextual explanations for its omission. Petitioner has also introduced new evidence of an indemnification agreement between Resmed Inc. and Resmed Corp., which confirms that Resmed Inc. is Resmed Corp.'s financial backstop and the party that is ultimately financially responsible for any liabilities associated with its infringing activities and those of its wholly-owned subsidiary, ResMed Corp.

I. ResMed Inc. is an RPI Because It Had the Opportunity to Control and Stands to Benefit From, this IPR

ResMed, Inc., is an RPI because it had an "opportunity" to control Petitioner's actions in this proceeding, and it stands to benefit from invalidation of the '333 Patent. *Wi-Fi One v. Broadcom Corp.*, 887 F.3d 1329, 1336 (Fed. Cir. 2018) ("[I]t should be enough that the nonparty has the actual measure of control *or opportunity to control* that might reasonable be expected between two formal coparties." (emphasis added)). Petitioner's attempt to reduce the RPI inquiry to a question of which entity paid its counsel's and expert's bills in this matter misstates the law, which does not require evidence that a non-party actually controlled this proceeding. Opp. at 1-2. As the parent of a wholly-owned subsidiary, ResMed, Inc., had the opportunity to control this proceeding, and Petitioner does not claim otherwise.

ResMed Inc. is also the party that stands ultimately stands to benefit from invalidation of the '333 Patent. *Applications in Internet Time, LLC, v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018) (the RPI inquiry seeks to determine “whether the non-party is a clear beneficiary that has a preexisting established relationship with the petitioner”). Petitioner does not deny that ResMed, Inc., actually has “a pecuniary interest as a corporate parent” and did not adduce evidence that could support such a conclusion. Opp. at 6-7. Indeed, Petitioner admits that the relevant corporate disclosure statement is meant to “assist the court in evaluating potential recusal or conflicts,” which is the same function that RPI identification plays IPR proceedings. *Id.*; Trial Practice Guide, § I.D.1 (A core function of the RPI requirement is to “assist members of the Board identifying potential conflicts.”).

That the parties are “separate entities” having “different functions and... separate business records and budgets” (Opp. at 2) does not “change the calculus here.” *Aylo Freesites. v. Dish Techs.*, IPR2024-00940, Paper 71 at 7 (P.T.A.B. Jan. 9, 2026) (“The fact that Petitioner and 9219 observe corporate formalities and maintain separate bank accounts . . . does little to counteract the evidence put forth by Patent Owner.”). As in *Aylo*, “Petitioner previously identified [ResMed, Inc.] as an RPI in an *inter partes* review pertaining to similar technology,” there is “evidence of common controlling directors,” the parties share a common place of business, and the same counsel represents both parties in the co-pending litigations. *Id.*

The Board should terminate this proceeding because Petitioner's main argument in Opposition—that Resmed, Inc., is not an RPI because it did not actively direct and control this IPR—is facially insufficient to show that it has properly named all RPIs in view of the other “evidence put forth by Patent Owner.” *Id.*

II. The Parties' Litigation History Confirms that Resmed Inc. is an RPI

A. Earlier IPRs Named Resmed Inc. as an RPI, and Petitioner Has Not Sufficiently Explained Why It Has Been Omitted Here

The Board should also find that ResMed, Inc., is an RPI because it was named as an RPI in earlier cases, and Petitioner has abruptly stopped naming ResMed, Inc., as an RPI with an obviously pretextual explanation. PO Mot. at 2-3; *Aylo*, Paper 71 at 7. Petitioner's statement that “the IPRs and PGRs PO cites included Resmed Inc. as an RPI because Resmed Inc. is a named defendant in the parallel litigation to those proceedings” is not true. Opp. at 5. Petitioner named ResMed, Inc., as an RPI in the '284 PGR, which concerned a patent that has only been asserted only in the Ohio Action (where Petitioner contends ResMed, Inc., is not a named defendant). PO Mot. at 2-3. It is “telling” that the only explanation Petitioner offers for its decision to stop identifying ResMed, Inc., as an RPI is false. Opp. at 5.

B. The Parallel Delaware Case Confirms ResMed, Inc., is an RPI

ResMed, Inc., is a defendant in a parallel litigation between the parties involving “related patents,” and the District Court has already rejected ResMed Inc.'s bid to dismiss the case for failure to name the correct party. PO Mot. 2; Opp.

at 5; Ex. 1086, 13-14. Moreover, the fact that “ResMed Inc. and Petitioner share the same litigation counsel, and there is overlap between witnesses appearing on the initial disclosure on both” is not “irrelevant,” as Petitioner claims. Opp. at 6. Both are common factors considered when determining whether a non-party is an RPI because they tend to show coordinated action and corporate blurring. *Radware, Inc. v. F5 Networks, Inc.*, IPR2017-01185, Paper 9 at 13-15 (P.T.A.B. Oct. 11, 2017).

C. The Parallel Ohio Case Establishes that ResMed, Inc., is an RPI

Rather than adduce evidence that ResMed, Inc., is not an RPI to the Ohio Action, it treats CleveMed's Counterclaim Answer as evidence that CleveMed “knows that Resmed Inc. is not an RPI.” Opp. at 1. This argument ignores that (1) CleveMed's Counterclaim Answer accused both ResMed Corp. and ResMed Inc. of infringing the asserted patents in the Ohio Action and (2) Petitioner's Response and Counterclaim Answer spoke in the same breath for ResMed Corp. and ResMed, Inc. Ex. 2040, ¶ 203 (“ResMed states that neither ResMed nor its parent corporation infringe the asserted patents, either literally or under the doctrine of equivalents.”).

D. The *Fractus* Case Confirms that ResMed, Inc., is an RPI

Fractus only agreed to voluntarily dismiss ResMed, Inc., from its litigation, under the understanding that ResMed, Inc., would refrain from “any action that will cause Resmed Corp. to be unable to fully satisfy any judgment” and would “remain financially liable at the same level, if any, for any judgment resulting from the above-captioned case, as if Resmed Inc. were a party.” Ex. 1082 at 3. ResMed, Inc.'s

indemnification of ResMed Corp. is further evidence that ResMed Inc. “is a clear beneficiary” to any potential unpatentability finding. *Ventex v. Columbia Sportswear*, IPR2017-00651, Paper 152, 10 (P.T.A.B. Feb. 19, 2019) (precedential).

III. Evidence of Corporate Blurring Confirms that ResMed, Inc., is an RPI

Petitioner's response to allegations of corporate blurring is again to misstate the law. PO Mot. at 5-6; Opp. at 7. The question is not whether evidence of corporate blurring establishes “direction and control of this proceeding” (the fourth *Taylor* factor, *see* § I), it is whether it establishes a “pre-existing substantive legal relationship with the party named in the proceeding [that] justifies binding the third party” (the second *Taylor* factor). *Atlanta Gas v. Bennet*, IPR2013-00453, Paper 88 at 9, 11 (P.T.A.B. Jan. 6, 2015) (evidence of corporate blurring between a parent “and its subsidiaries . . . weighs heavily in favor of finding [the party] to be a real party in interest”). In this inquiry, the overlap of officers, sharing of business addresses, and the use of an “umbrella term” to refer to the parent and the subsidiaries (all facts which are not in dispute) are evidence of corporate blurring that justifies binding ResMed, Inc., along with ResMed Corp. *Id.* at 11. Indeed, ResMed, Inc., agreed to be formally bound in the Fractus case. § II.D.

For all of these reasons, CleveMed respectfully requests that the Board terminate this proceeding because ResMed, Inc., is an unnamed RPI, and amending RPI designations at this point would make the Petition time barred under § 315(b).

Patent Owner's Authorized Reply to Motion to Terminate
IPR2025-00246 (U.S. Patent No. 11,857,333)

Respectfully submitted,

Dated: March 10, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the P-TACTS constitutes electronic service if Patent Owner provides the foregoing document (excluding exhibits), service was made on the Petitioner as detailed below.

<i>Date of service</i>	March 10, 2026
<i>Manner of service</i>	Electronic Filing and Electronic Mail (PH-ResMed-CleveMed@paulhastings.com)
<i>Documents served</i>	PATENT OWNER'S AUTHORIZED REPLY TO ITS MOTION TO TERMINATE
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