

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

RESMED CORP.,  
Petitioner,

v.

CLEVELAND MEDICAL DEVICES, INC.,  
Patent Owner.

---

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)<sup>1</sup>

---

Before SHERIDAN K. SNEDDEN, NEIL T. POWELL, and  
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

HARDMAN, *Administrative Patent Judge*.

ORDER

Denying Patent Owner's Motion to Terminate  
*35 U.S.C. § 312(a)(2); 37 C.F.R. §§ 42.8(b)(1); 37 C.F.R. § 42.5*

---

<sup>1</sup> This Order addresses issues common to the captioned cases. We exercise our discretion to issue one Order to be filed in each case.

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

## I. INTRODUCTION

Patent Owner Cleveland Medical Devices, Inc. filed an authorized Motion to Terminate. Paper 37 (“Motion” or “Mot.”).<sup>2</sup> Petitioner Resmed Corp. filed an opposition. Paper 38 (“Opp.”). Patent Owner filed a Reply. Paper 39 (“Reply”).

Patent Owner contends that Petitioner failed to name its corporate parent Resmed Inc. as a real party in interest (“RPI”) in the subject IPRs. *See* Mot. 1; *see also* Paper 1, 74 (identifying only Resmed Corp. as the RPI); 35 U.S.C. § 312(a)(2) (a petition for inter partes review (IPR) “may be considered only if . . . the petition identifies all real parties in interest”). Patent Owner asserts that adding Resmed Inc. as an RPI would result in a new filing date, causing the Petitions to become time-barred under 35 U.S.C. § 315(b).<sup>3</sup> *Id.* Patent Owner thus requests that we dismiss the Petitions and terminate these proceedings. *Id.* at 7. Petitioner denies that Resmed Inc. is an RPI. *See* Opp. 1.

---

<sup>2</sup> We cite papers and exhibits filed in IPR2025-00159. The parties filed similar papers and exhibits in the other captioned cases. The record reveals inconsistent capitalization of the name “Resmed,” with Petitioner generally using “Resmed” and Patent Owner using “ResMed.” We follow Petitioner’s convention.

<sup>3</sup> Patent Owner does not specify which party would be time-barred. We note, however, that only Petitioner, and not Resmed Inc., has been served with counterclaims alleging infringement of the patents challenged in these IPR proceedings. *See* Opp. 4–5; *Resmed Inc. v. Cleveland Medical Devices Inc.*, 23-cv-02221 (N.D. Ohio) (the “Ohio case”).

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

Because Petitioner persuades us that Resmed Inc. is not an RPI in these proceedings, we deny Patent Owner’s Motion.

## II. ANALYSIS

### *A. Principles of Law*

Under 35 U.S.C. § 312(a)(2), a petition may be considered only if it identifies all RPIs. We generally accept a petitioner’s initial identification of RPI(s), unless the patent owner presents some evidence to support its argument that an unnamed party should also be included. *See Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018) (explaining that “an IPR petitioner’s initial identification of the real parties in interest should be accepted unless and until disputed by a patent owner”). “[A] patent owner must produce some evidence to support its argument that a particular third party should be named a real party in interest.” *Id.* After a patent owner has done so, “it is Petitioner’s burden to bring forth evidence or arguments demonstrating that it had named all RPIs.” *Tianma Microelectronics Co. v. LG Display Co.*, IPR2025-01579, Paper 12, at 9–10 (March 18, 2026) (precedential).

“Determining whether a party is an RPI demands a flexible approach that takes into account both equitable and practical considerations.” *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1027–28 (Fed. Cir. 2021) (cleaned up) (quoting *Applications in Internet Time, LLC (“AIT”) v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018)). “[T]he two questions lying at [the] heart [of the RPI inquiry] are whether a non-party ‘desires review of the patent’ and whether a petition has been filed at a nonparty’s ‘behest.’”

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

*AIT*, 897 F.3d at 1351 (quoting USPTO’s Trial Practice Guide, 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012)<sup>4</sup>).

The RPI “determination has no bright-line test—relevant considerations, however, may include, ‘whether a [ ]party exercises [or could exercise] control over a petitioner’s participation in a proceeding, or whether a [ ]party is funding the proceeding or directing the proceeding.’” *Uniloc 2017 LLC*, 989 F.3d at 1028 (quoting *AIT*, 897 F.3d at 1342–43). Other relevant factors include the non-party’s relationship with the petitioner, the non-party’s relationship to the petition, and the nature of the entity filing the petition. *AIT*, 897 F.3d at 1351; TPG § I.D.1.

“We also may consider whether Petitioner’s actions ‘have blurred sufficiently the lines of corporate separation with [an unnamed related entity], such that [the entity] could have controlled the filing and participation of the IPRs.’” *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68, at 15 (PTAB Aug. 18, 2015) (precedential except § II.E.1) (quoting *Zoll Lifecor Corp. v. Philips Elec. N. Am. Corp.*, IPR2013-00606, Paper 13, at 10 (PTAB Mar. 20, 2014)).

---

<sup>4</sup> The current version of the Trial Practice Guide (“TPG”) is available at <https://www.uspto.gov/patents/ptab/trial-practice-guide>.

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

*B. Whether Resmed Inc. is an RPI*

*1. Whether Resmed Inc. Has a Relationship With These IPR Proceedings*

Patent Owner alleges that Resmed Inc. both “funds” and has “exercised control [and] direction” over these IPRs. Mot. 1, 4. Patent Owner, however, fails to substantiate these assertions and has not directed us to any persuasive evidence of record that Resmed Inc. has played any role whatsoever in these proceedings.

First, the evidence of record shows that Petitioner Resmed Corp. is the “client” and “owner” of these proceedings and the entity that pays Petitioner’s counsel and expert witness fees in these proceedings. *See* Ex. 1080 (information identifying Resmed Corp. as the “owner” and “client” of invoices from Paul Hastings LLP and Dr. Kirkness); Ex. 1081 (screenshot from Resmed Corp.’s IP services management system, Anaqua, showing that Resmed Corp. is the “client” for these proceedings); Ex. 1079 (Nguyen Decl.) ¶¶ 3–4.

Second, there is no evidence of record indicating that any personnel from Resmed Inc. directed, controlled, or participated in these IPR proceedings. The record identifies only one specific person associated with Resmed Corp., i.e., Resmed Corp.’s CEO, Michael Fliss. Petitioner’s lead counsel in these IPRs testified that “Mr. Fliss does not direct or control this proceeding, nor has he participated in this proceeding” and that neither she nor anyone in her law firm has communicated with Mr. Fliss “regarding this proceeding or otherwise.” Ex. 1079 (Nguyen Decl.) ¶ 2; Opp. 3. Patent

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

Owner does not dispute these statements or otherwise allege that Mr. Fliss or other employees or officers of Resmed Corp. have played a role in these proceedings.

Third, there is no evidence that the Petitions were filed at Resmed Inc.'s behest. This makes sense given that Resmed Inc. is not a party to the parallel litigation, and thus "there is no reason that Resmed Inc. would have had Resmed Corp. file the petition in the instant proceeding on its 'behest.'" *See Opp. 2.*

For the above reasons, we see no evidence of record indicating that Resmed Inc. funds, directs, controls, or participates in IPR proceedings. Accordingly, we find that Resmed Inc. does not have a relationship to these IPR proceedings.

*2. Whether Resmed Inc. is an RPI Due to "Corporate Blurring" and/or an Opportunity to Control Petitioner's Actions*

With no evidence of actual control over these proceedings, Patent Owner focuses on Resmed Inc.'s purported "'opportunity' to control Petitioner's actions in this proceeding" and "stand[ing] to benefit from the invalidation" of the challenged patents. Reply 1. In this regard, Patent Owner relies on the parent-subsidary relationship and alleged "corporate blurring." *See Mot. 1* ("ResMed Inc. is an RPI in view of blurred corporate structures, and because ResMed Inc. is a clear beneficiary with *at least* an opportunity to control its wholly owned subsidiary, ResMed Corp."); Reply 1 ("As the parent of a wholly-owned subsidiary, ResMed, Inc., had

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

the opportunity to control this proceeding, and Petitioner does not claim otherwise.”). As will be discussed, we find Patent Owner’s arguments unavailing.

As Petitioner establishes, parent Resmed Inc. and Petitioner Resmed Corp. are separate entities with separate states of incorporation and principal places of business. Specifically, “Resmed Inc. is a Delaware corporation with a principal place of business in San Diego, and Resmed Corp. is a Minnesota corporation having a principal place of business in Minnesota.” Opp. 2; Ex. 2045 (Resmed Inc. SEC Form 10-K showing state of incorporation as Delaware and address in California); Ex. 2042, 1 (Resmed Corp. Minnesota Business Record showing registered office address in Roseville, MN).

Patent Owner nevertheless assumes that by virtue of being Petitioner’s corporate parent, Resmed Inc. has “the opportunity to control this proceeding.” Mot. 1. Patent Owner provides no factual or legal support for that notion, but even assuming that every corporate parent has the theoretical power to control every legal proceeding involving its subsidiaries, we find that relying on such “theoretical power” would eviscerate the RPI test. *See Daifuku Co. v. Murata Mach., Ltd.*, IPR2015-01538, Paper 11, at 11 (Jan. 19, 2016) (“If theoretical power, whether exercised or not, were the controlling test for determining a real party in interest, the test would be eviscerated of substance.”). It would also contradict the general corporate law principle that control through ownership alone (and the theoretical power that goes along with it) does not eviscerate corporate distinctions

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

between a parent and its subsidiaries, particularly where the evidence shows—as it does here—those distinctions have at all times been maintained with respect to the activity at issue. *See, e.g., U.S. v. Bestfoods*, 524 U.S. 51, 61–62 (1998) (“[T]he exercise of the ‘control’ which stock ownership gives to the stockholders,” including “the election of directors, the making of by-laws . . . and the doing of all other acts incident to the legal status of stockholders” “will not create liability beyond the assets of the subsidiary.”) (citation omitted).

Patent Owner also points to the overlap of one executive, namely, Mr. Fliss’s dual roles as both the Chief Executive Officer of Resmed Corp. and the Chief Revenue Officer of Resmed Inc. Mot. 4–5 (citing Exs. 2042, 2043, 2044). But as the U.S. Supreme Court has recognized, “it is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary” and “directors and officers holding positions with a parent and its subsidiary can and do ‘change hats’ to represent the two corporations separately, despite their common ownership.” *Bestfoods*, 524 U.S. at 61–62 (quoting *American Protein Corp. v. AB Volvo*, 844 F.2d 56, 57 (2d Cir.) and *Lusk v. Foxmeyer Health Corp.*, 129 F.3d 773, 779 (5th Cir. 1997)). Here, the record lacks any suggestion that Mr. Fliss participates in Petitioner’s legal matters. In fact, the only evidence regarding Mr. Fliss’s activities shows the opposite, i.e., that he has not participated in these IPR proceedings. Ex. 1079 (Nguyen Decl.) ¶ 2.

Patent Owner also asserts that Resmed Inc. and Petitioner both have offices at the same San Diego address, and this “sharing of physical offices”

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

is “indicative of corporate blurring.” Mot. 5 (quoting *Radware, Inc. v. F5 Networks, Inc.*, IPR2017-01185, Paper 9, at 13 (PTAB Oct. 11, 2017); citing Ex. 2042, 1 and Ex. 2045, 1 (showing same San Diego address for both entities)). On this record, we agree with Petitioner that Patent Owner “provides no explanation as to why sharing one business address matters” and that “[i]t does not, particularly here, where Resmed Corp.’s actual principal place of business is Minnesota.” Opp. 3–4.

Patent Owner cites three cases in support of this point about shared offices, but only one of those cases (*Sirius*) mentioned shared physical offices. See Mot. 4–5 (citing *Aylo Freesites Ltd. v. Dish Techs. LLC*, IPR2024-00940, Paper 71 (PTAB Jan. 9, 2026); *Sirius XM Radio, Inc. v. Fraunhofer-Gesellschaft zur Förderung der Angewandten Forschung E.V.*, IPR2018-00681, Paper 12 (PTAB Sept. 6, 2018); *Radware, Inc.*, IPR2017-01185, Paper 9, at 13). In *Sirius*, the Board found that “Holdings,” an unnamed parent holding company, was an RPI “[b]ased on Holdings’ full ownership of Petitioner, its identical management composition, and evidence of its past control in legal matters involving Petitioner.” *Sirius*, IPR2018-00681, Paper 12 at 5. Thus there were relevant facts in *Sirius* that do not exist on this record, including “complete management overlap” and joint involvement in lawsuits. See *id.* at 6.

In short, although Patent Owner’s evidence of Mr. Fliss’s dual roles and a common address between the entities demonstrates a relationship between *parties*, we find that it does not establish “corporate blurring” sufficient to “justif[y] binding ResMed Inc., along with ResMed Corp.” in

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

these IPR proceedings. Reply 5; Mot. 5. And as discussed above, beyond the theoretical, the record does not evidence any relationship between Resmed Inc. and *these IPR proceedings*.

3. *Whether Resmed Inc. is a Beneficiary of These IPRs*

Patent Owner asserts that Resmed Inc. is an RPI because it “directly benefits from,” is a “clear beneficiary” of, or “has a direct financial stake” in these IPR proceedings. Mot. 1, 4. Patent Owner, however, does not explain how Resmed Inc. purportedly “stands to benefit from invalidation” of the challenged patents. Reply 1. Indeed, Patent Owner did not sue Resmed Inc. in the parallel litigation involving the challenged patents. *See* Opp. 2.

Patent Owner states that Resmed Inc. has “a pecuniary interest as a corporate parent.” Opp. 6–7. However, “we must be cautious not to ‘overextend[]’ the reasoning set forth in *AIT* to any situation where ‘a party benefits generally from the filing of the Petition and also has a relationship with the Petitioner.’” *Ventex Co. v. Columbia Sportswear N. Am., Inc.*, IPR2017-00651, Paper 152 at 10 (PTAB Jan. 24, 2019) (precedential) (quoting *Unified Patents, Inc. v. Realtime Adaptive Streaming, LLC*, IPR2018-00883, Paper 36 at 14–15 (PTAB Oct. 11, 2018)). In other words, although Resmed Inc. may have a pecuniary interest in these IPRs that is incidental to being Petitioner’s corporate parent, we find that that incidental interest is insufficient to make Resmed Inc. an RPI to these proceedings. *See id.*

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

4. *Whether Resmed Inc. Controls Petitioner’s Legal Proceedings*

Patent Owner argues that Resmed Inc. has control of or the opportunity to control these IPRs as evidenced by “ResMed Inc.’s inclusion as a RPI on prior IPRs and PGRs against related patents” and the litigation history between Patent Owner and the Resmed entities. *See* Mot. 5–6; *see also id.* at 1–2 (discussing legal matters); Reply 3–5.

We agree with Petitioner that the various legal matters raised by Patent Owner do not demonstrate that Resmed Inc. is an RPI here. *See* Opp. 4–7. We address the various legal matters below.

*i. The Delaware Case*

Patent Owner sued parent Resmed Inc. (but not Petitioner Resmed Corp.) in Delaware for infringement of U.S. No. 10,076,269, which is a parent of challenged patent U.S. 11,375,921. Mot. 2; *see Cleveland Medical Devices Inc., v. Resmed Inc.*, 22-cv-00794 (D. Del.) (the “Delaware case”). We find that Resmed Inc.’s status as a party to the Delaware case does not make it an RPI here.

Resmed Inc.’s involvement in the Delaware case is due to Patent Owner’s unilateral choice to sue Resmed Inc. As the record reflects, early in the suit, Resmed Inc. filed a motion to dismiss, asserting that it was not the appropriate defendant. *See* Opp. 6. Although the court denied that pleadings-stage motion (*see* Mot. 2), after full discovery Resmed Inc. moved for summary judgment that it was incorrectly named, and that motion remains pending. Opp. 6; Tr. 40:22–25. Patent Owner failed to mention or

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

address this pending motion in its briefing. Given that Resmed Inc. has consistently argued that it is incorrectly named in the Delaware case, on this record we do not find that Resmed Inc.’s presence in the Delaware case—which is the result of Patent Owner’s unilateral action—to weigh in favor of Resmed Inc. being an RPI in the present IPR proceedings.

*ii. The Ohio Case*

As noted above (*see supra* n.3), Petitioner filed the Ohio case, seeking a declaratory judgment of noninfringement of U.S. Patent No. 11,602,284, which is a child of challenged patent U.S. 11,375,921. Opp. 4. Patent Owner responded by asserting infringement counterclaims for all of the patents challenged in these IPRs. Opp. 4–5. Notably, however, Patent Owner did not add Resmed Inc. as a counterclaim defendant. *Id.*

We find that Patent Owner’s failure to sue Resmed Inc. for infringement of the challenged patents strongly supports the notion that Resmed Inc. is not an RPI here. We agree with Petitioner that if Patent Owner “thought Resmed Inc. was the proper entity, it would have added Resmed Inc. to the Ohio case.” Opp. 5. But Patent Owner did not.<sup>5</sup>

---

<sup>5</sup> In its Motion, Patent Owner asserts that in the Ohio case it “countered with claims of infringement against ResMed Corp. and ResMed Inc.” Mot. 2–3. This statement is misleading. Although Patent Owner mentioned Resmed Inc. in its infringement counterclaims, it did not name Resmed Inc. as a counterclaim defendant. *See, e.g.*, Tr. 39:1–23, 42:4–18; Opp. 4. Given that Patent Owner made allegations against Resmed Inc. but Resmed Inc. is not a party, we find that Resmed Corp.’s reference to Resmed Inc. in the pleadings is not probative of whether Resmed Inc. is an RPI here. *See, e.g.*, Mot. 3;

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

Patent Owner further argues that in the Ohio case, “ResMed Corp. aligned itself with ResMed Inc. by incorporating ResMed Inc.’s invalidity contentions and answer and affirmative defenses from the Delaware case.” Mot. 3 (citing Ex. 2040 ¶¶ 205, 224, 259). However, a party can unilaterally incorporate another’s contentions and defenses. *See* Reply 7. Thus, we agree with Petitioner this does not establish coordination between the Resmed entities. *Id.*

Patent Owner also points to Petitioner’s corporate disclosure statement in the Ohio case, which identifies Resmed Inc. as its parent corporation and a party that “may have a pecuniary interest in the outcome of this case.” Mot. 3 (citing Ex. 2041, 2). We do not find this fact persuasive in view of the fact that Resmed Inc. consolidates its financial statements with that of its subsidiaries, including Petitioner. *See, e.g.*, Ex. 2045, 2 (“As used in this 10-K, the terms ‘Resmed’, ‘we’, ‘us’, ‘our’ and ‘the Company’ refer to ResMed Inc., a Delaware corporation, and its subsidiaries, on a consolidated basis, unless otherwise stated.”); *see also infra* Section II.B.4.iii.

Patent Owner further argues that in the Delaware and Ohio cases “ResMed Inc. and Petitioner share the same litigation counsel, and there is overlap between the witnesses appearing on the initial disclosures in both.” Mot. 6; *see also* Ex. 2046, 2–3, 12 (Resmed Inc.’s initial disclosures in the

---

Reply 4 (asserting that Resmed Inc. is an RPI because “Petitioner’s Response and Counterclaim Answer spoke in the same breath for ResMed Corp. and ResMed, Inc.”) (citing Ex. 2040 ¶ 203).

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

Delaware case identifying DLA Piper LLP as counsel, Gregory Dench as knowledgeable regarding the accused products, and Michael Pinczuk as knowledgeable regarding communications with Patent Owner); Ex. 2047, 3, 7 (Resmed Corp.’s initial disclosures in the Ohio case identifying the same). This too in unavailing because this overlap is unsurprising given that Patent Owner accused the same products of infringing in both cases but sued only Resmed Inc. in Delaware and only Petitioner in Ohio. *See* Opp. 6.

*iii. Resmed Inc.’s 10-K*

Patent Owner alleges that

[f]urther showing that ResMed Inc. is a controlling authority is the 10-K filing with the SEC for ResMed Inc. that describes the various litigations involving ResMed Inc. and Petitioner, including these proceedings, as a collective stating that “*we* are subject to routine litigation incidental to *our* business” and that “[b]ased on currently available information, *we* are unable to make a reasonable estimate of loss or range of losses.”

Mot. 6 (citing Ex. 2045, 101–102). This argument is unavailing. The use of the collective “our” and “we” in general statements in the 10-K filing does not necessarily demonstrate coordination in legal actions, given that “consolidating the activities of a subsidiary into the parent’s annual reports is a common business practice. It is allowed by both the Internal Revenue Service and the Securities and Exchange Commission, and it is recommended by generally accepted accounting principles.” *Calvert v. Huckins*, 875 F. Supp. 674, 678–79 (E.D. Cal. 1995); *see also Par Pharm., Inc. v. Jazz Pharms., Inc.*, IPR2015-00546, Paper 25, at 10–19 (PTAB July 28, 2015) (finding no RPI when petitioner and parent used “we” in SEC

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

filings and shared officers and addresses). In fact the 10-K undermines Patent Owner's arguments because in the discussion of specific legal matters, the 10-K distinguishes between Resmed Inc. and Petitioner. *See* Ex. 2045, 101–102 (specifying, e.g., that “ResMed Corp. filed a petition with the PTAB” and “ResMed. Corp. filed” the Ohio case).

*iv. Various IPR and PGR Petitions*

Patent Owner asserts that “ResMed Inc. has control or the opportunity to control the pending IPRs as evidenced by ResMed Inc.’s inclusion as a RPI on prior IPRs and PGRs against related patents,” i.e., IPR2023-00565, PGR2024-00012, and IPR2026-00191. Mot. 5, 7; *see also id.* at 2–3 (discussing IPRs); Reply 3. However, the totality of the surrounding circumstances reveal that Resmed Inc. was named in those earlier proceedings for reasons other than purported coordination.

First, in March 2023, Petitioner filed IPR2023-00565 (the “565 IPR”), challenging U.S. Patent No. 10,076,269, the patent on which Resmed Inc. had previously been sued in the Delaware case. *See* Mot. 2; IPR2023-00565, Paper 1 at 1 (Mandatory Notices). In its petition in the 565 IPR, Petitioner “identifie[d] ResMed Inc. as a real party in interest without conceding that it is, in fact, a real party in interest” and further stated that “ResMed Inc., a separate entity, is identified as a RPI out of an abundance of caution and to avoid debate over the scope of RPI in 35 U.S.C. §312(a)(2).” IPR2023-00565, Paper 1 at 1, 5 n.1. Petitioner explains that it named Resmed Inc. as an RPI in the 565 IPR “because Resmed Inc. is a named defendant in the parallel litigation to those proceedings.” Opp. 5. We credit

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

this explanation because it is consistent with the caveated language that appears in the 565 IPR petition.

Second, in December 2023, Petitioner filed PGR2024-00012 (the “012 PGR”), which concerns U.S. Patent No. 11,602,284 (the patent that was the basis for Petitioner’s filing of the Ohio case). *See* Mot. 2–3. Here again Petitioner named Resmed Inc. as an RPI using caveated language. *See* PGR2024-00012, Paper 2 at 4 (PTAB Dec. 13, 2023) (“ResMed Corp. (‘Petitioner’) identifies ResMed Inc. as a real party in interest without conceding that it is, in fact, a real party in interest.”). Although Resmed Inc. is not actually a party to the Ohio case, Patent Owner admits that its counterclaims nevertheless “name[] both ResMed Corp. and ResMed Inc. as parties that infringe the asserted patents.” *See* Tr. 39:1–23. Under these circumstances, we do not find that the 012 PGR suggests that Resmed Inc. is an RPI here.

Finally, Patent Owner points to IPR2026-00191 (the “Fractus IPR”), which Petitioner filed against a patent owned by third party Fractus, S.A. Mot. 7. In the Fractus IPR Petitioner again named Resmed Inc. as an RPI. *See* IPR2026-00191, Paper 1 at xiv (PTAB Jan. 2, 2026). Petitioner, however, explains that it did so because Fractus had named Resmed Inc. as a defendant in the parallel litigation.<sup>6</sup> *Opp.* 7; *see also* Ex. 1082, 2 (noting that

---

<sup>6</sup> *Fractus, S.A. v. Resmed Inc. and Resmed Corp.*, 3:25-cv-02680-LL-JLB (S.D. Cal.) (the “Fractus case”).

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

“Fractus filed suit against Resmed Inc. and Resmed Corp.”).<sup>7</sup> Thus, we do not find that the Fractus IPR suggests that Resmed Inc. must be named as an RPI here.

Patent Owner cites *Aylo Freesites Ltd. v. Dish Techs. L.L.C.*, IPR2024-00940, Paper 71 at 7 (PTAB Jan. 9, 2026), for the proposition that “prior identification of RPI in IPRs pertaining to similar technology [is] evidence that the party should be identified in the present case.” Mot. 5; *see also* Reply 2. But *Aylo* involved additional facts not present here, including that the unnamed party and petitioner *Aylo* had joint responsibility for operating the accused products. *Aylo Freesites Ltd.*, IPR2024-00940, Paper 71 at 6, 7. Here in contrast, we are not directed to evidence demonstrating Resmed Inc.’s involvement in the accused products at issue in the parallel district court cases. Instead, the record reflects that Resmed Inc. maintains it is not a proper party in the Delaware case and was not sued in the Ohio case. *See supra*; *see also* Ex. 2045 (Form 10-K stating that Resmed Inc. “moved to dismiss the [Delaware case] because Cleveland Medical sued the wrong Resmed entity.”).

For the above reasons, although Petitioner named Resmed Inc. as an RPI in the 565 IPR, the 012 PGR, and the Fractus IPR, given the

---

<sup>7</sup> Petitioner further states that “Fractus has since voluntarily dismissed Resmed Inc. upon information that Resmed Corp. (not Resmed Inc.) performs the relevant activities identified in the Complaint.” Opp. 7 (citing Ex. 1082).

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

surrounding circumstances we do not find that this suggests that Resmed Inc. is an RPI here.

*v. Resmed Inc.’s Indemnification of Resmed Corp. in the Fractus Litigation*

Patent Owner asserts that in its Opposition brief, Petitioner “introduced new evidence of an indemnification agreement between Resmed Inc. and Resmed Corp.” in the Fractus case, 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.” Reply 1; *see also id.* at 4–5 (citing Ex. 1082, 3). Patent Owner further asserts that the indemnification “evidence[s] that ResMed Inc. ‘is a clear beneficiary’ to any potential unpatentability finding.” *Id.* at 4–5 (citing *Ventex*, IPR2017-00651, Paper 152 at 10).

We are not persuaded that the Fractus agreement is relevant to whether Resmed Inc. is an RPI in these IPRs. The agreement covers unrelated litigation with a different patent owner (Fractus). There is no indication that any similar agreement exists related to the litigation involving the challenged patents here.

*vi. Engagements of Petitioner’s Expert, Dr. Kirkness*

Finally, Patent Owner argues that Dr. Kirkness’s “numerous engagements with ResMed Inc., including work on product development and patent investigations, and his inability to testify as to whether Petitioner or ResMed Inc. is paying for his service in the current IPRs confirm ResMed

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

Inc. routinely exercises such control over Petitioner’s matters.” Mot. 6–7. (citing Ex. 2048 (Kirkness Tr.), 13:19–14:2, 8:5–13:18; Ex. 1004, 1, 7–8, 15, 18; IPR2022-00993, Exs. 1046–1047).

This argument is unavailing. We agree with Petitioner that “[f]inancial records confirm Dr. Kirkness’s engagement here is paid by Resmed Corp.” and “Dr. Kirkness’s other Resmed engagements prove nothing about who funds or controls *this IPR*.” Opp. 7; Ex. 1080; Ex. 1081; Ex. 1079 (Nguyen Decl.) ¶¶ 3–4.

*vii. Conclusion Regarding Whether Resmed Inc. is an RPI in These IPRs*

Considering the totality of the arguments and evidence, we are persuaded that Resmed Inc. is not an RPI in these IPR proceedings. Petitioner has established that it has complied with the statutory requirement to identify all real parties-in-interest.

### III. CONCLUSION

For the foregoing reasons, we deny Patent Owner’s motion to terminate.

### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s Motion to Terminate is *denied*.

IPR2025-00158 (Patent 11,690,512 B1)  
IPR2025-00159 (Patent 11,375,921 B1)  
IPR2025-00160 (Patent 11,786,680 B1)  
IPR2025-00246 (Patent 11,857,333 B1)  
IPR2025-00247 (Patent 11,872,029 B1)

For PETITIONER:

Lisa Nguyen  
David Tennant  
Grace Wang  
PAUL HASTINGS LLP  
lisanguyen@paulhastings.com  
davidtennant@paulhastings.com  
gracewang@paulhastings.com

For PATENT OWNER:

Jeffrey Price  
Jenna Fuller  
Jeffrey Eng  
KRAMER LEVIN NAFTALIS & FRANKEL LLP  
jprice@kramerlevin.com  
jfuller@kramerlevin.com  
jeng@kramerlevin.com