

Filed on behalf of: Resmed Corp.

Filed: March 5, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.,

Petitioner,

v.

CLEVELAND MEDICAL DEVICES INC.,

Patent Owner.

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

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO TERMINATE**

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1033	Loube, D., "Technologic Advances in the Treatment of Obstructive Sleep Apnea Syndrome," <i>CHEST</i> 116:1426-1433 (1999)
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1035	J. Meurice, et al., "Efficacy of Auto-CPAP in the Treatment of Obstructive Sleep Apnea/Hypopnea Syndrome," <i>Am. J. Respir. Crit. Care Med.</i> 153:794-8 (1996)
1036	S. Wilber, et. al., "Patient Monitoring and Anesthetic Management: A Physiological Communications Network," <i>JAMA</i> 191:893-898 (1965)
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Resmed Corp. is the sole RPI in this case. Resmed Corp. (not Resmed Inc.) paid and continues to pay for this proceeding. And Resmed Corp. (not Resmed Inc.) directs and controls counsel in this proceeding. These facts are dispositive and confirm PO's motion to terminate is meritless.

In fact, PO knows that Resmed Inc. is not an RPI. After completion of summary judgment briefing that PO incorrectly named Resmed Inc. (not Resmed Corp.) in another litigation, it was PO that then deliberately chose to assert the challenged patent against Resmed Corp. (not Resmed Inc.) in the parallel litigation.

Indeed, the only "evidence" to which PO points to assert that Resmed Inc. should have been identified as an RPI are facts present in any common parent-subsidary relationship (such as parent identification in corporate disclosure statements) and other IPRs and PGRs that identified Resmed Inc. as an RPI (because Resmed Inc. was incorrectly named in the parallel litigation).

PO's motion to terminate is nothing more than a desperate diversion from the merits of this proceeding, and should be denied.

I. Resmed Inc. Has Not Directed, Controlled, Or Funded This IPR

Resmed Inc. is not an RPI to this proceeding. "To decide whether a party other than the petitioner is the real party in interest, the Board seeks to determine whether some party other than the petitioner is the 'party or parties at whose behest the petition has been filed.'" *Wi-Fi One, LLC v. Broadcom Corp.*, 887 F.3d 1329, 1336

(Fed. Cir. 2018). “[A] party that funds and directs and controls an IPR or [PGR] proceeding constitutes a ‘real party-in-interest.’” *Id.* The RPI analysis examines the “relationship between a party and a *proceeding*,” not “between *parties*.” *Par Pharm. v. Jazz Pharm., Inc.*, IPR2015-00546, Paper 25, at 14 (July 28, 2015).

Resmed Corp. (not Resmed Inc.) is the only RPI in this case. Unnamed in the parallel litigation, there is no reason that Resmed Inc. would have had Resmed Corp. file the petition in the instant proceeding on its “behest.” This is definitively confirmed by financial records from multiple internal financial systems which show Resmed Corp. as the “client” and “owner” of this proceeding, and the entity that has been funding this IPR. Nguyen Decl. ¶¶ 3–4; EX1080, EX1081.

Notably, Resmed Corp. and Resmed Inc. are separate entities. They have separate states of incorporation and principal places of business. 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. EX2042. The two entities have completely different functions and have separate business records and budgets. EX1082; EX1079. Accordingly, the only proper RPI in the instant IPR is Resmed Corp.

II. Common Corporate Affiliation Does Not Make Resmed Inc. An RPI

PO argues that Resmed Inc. should be listed as an RPI because “Res[m]ed Inc. and Petitioner share executive officers and a physical business address” and

Resmed Inc. uses the term “we” in its SEC filings. Mot., 4–6. Nonsense. These are common facts among parents and their subsidiaries, and more importantly, are completely irrelevant as to direction and control of this proceeding.

First, PO points to the fact that Resmed Corp.’s Chief Executive Officer holds a Chief Revenue Officer position in Resmed Inc. But the Board has recognized “[i]t is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary.” *Daifuku Co., Ltd. v. Murata Mach., Ltd.*, IPR2015-01538, Paper 11, at 9 (Jan. 19, 2016). Critically, this officer has had no participation in this proceeding, let alone direction and control. Nguyen Decl., ¶2 *see Global Tel*link Corp. v. Securus Technologies, Inc.*, IPR2015-01220, Paper 44 at 11 (Nov. 30, 2016) (“[W]e found the existence of common directors or employees ... insufficient to show a real party-in-interest issue, unless the directors controlled or participated in the filing of the proceedings”).

Second, PO provides no explanation as to why sharing one business address matters. It does not, particularly here, where Resmed Corp.’s actual principal place of business is Minnesota. “[E]vidence of a common address ... does not establish a relationship between [Resmed Inc.] and this proceeding.” *See Daifuku*, at 10–11.

Third, using the term “we” in Resmed Inc.’s SEC filings does not show “that Res[m]ed Inc. is a controlling authority.” Mot., 6. The Board directly addressed this issue, finding that the use of “we” in an SEC filing does not establish control over

“this proceeding” “even if used deliberately when referring to what could be the current Petition.” *Par Pharm., Inc., v. Horizon Therapeutics, Inc.*, IPR2015-01127, Paper 13 at 20 (Nov. 4, 2015); *see also Jazz Pharm.*, at 10–19 (finding no RPI when petitioner and parent used “we” in SEC filings, shared officers, and addresses).

PO's citations to *Sirius XM* and *Radware* do not support PO's arguments. To the contrary, these cases confirm that there is no corporate blurring. In *Sirius XM*, the parent had no operations independent of the petitioner. *See Sirius XM*, IPR2018-00681, Paper 12 at 5 (Sept. 6, 2018). Likewise, in *Radware*, the record included management facts supporting an inference that the parent exercised effective control over the petitioner's operations and decisions. *Id.* at 15. *Radware, Inc.*, IPR2017-01185, Paper 9 at 13–14 (Oct. 11, 2017). No such circumstances exist here.

III. The Cited Litigations Confirm Resmed Inc. Is Not An RPI

A. The Parallel Ohio Case

Given the undisputed fact that Petitioner is the Resmed entity responsible for the commercialization of Resmed's products in the U.S., Petitioner filed a Declaratory Judgment of Non-infringement of U.S. Patent No. 11,602,284. *ResMed Corp. v. Cleveland Medical Devices, Inc.*, No. 23-cv-02221 (N.D. Ohio Mar. 20, 2023). Although PO then expanded the case with additional patents in its Amended Answers and Counterclaims, including the assertion of the challenged patent, tellingly, PO did not add Resmed Inc. as a counterclaim defendant, despite being

well-aware of Resmed Inc., as PO concedes. Mot., 2.

If PO thought Resmed Inc. was the proper entity, it would have added Resmed Inc. to the Ohio case. PO did not. Moreover, if PO truly thought Resmed Inc. was an RPI, it would have challenged Resmed Corp.'s lack of identification of Resmed Inc. before the IPR was even instituted. PO did not. It is only now, in a last gasp effort to save its clearly invalid patent that PO raises this issue. But Resmed Corp. is the entity controlling this IPR, and there is no evidence establishing otherwise.

B. The Delaware Case

The Delaware case (litigating related patents against Resmed Inc. alone) confirms that Resmed Inc. is not an RPI. *First*, PO argues Resmed Inc.'s control is "evidenced by Res[m]ed Inc.'s inclusion as an RPI on prior IPRs and PGRs against related patents" from the Delaware case. Mot., 5. But 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. In fact, to avoid doubt, Petitioner expressly stated in those IPRs that it "identifies Res[m]ed Inc. as a real party in interest without conceding that it is, in fact, a real party in interest." EX1083; EX1084. PO disingenuously states "Petitioner offered no explanation for its shift" in identifying Inc. as an RPI. Mot., 3. Incorrect. As Petitioner told PO during the meet and confer for this Motion, Petitioner identified Resmed Inc. when it was a named defendant in the parallel litigation. PO's refusal to acknowledge and address this fact is telling.

Second, PO relies on a pleading-stage ruling from Delaware (Mot., 2) where Resmed Inc.'s motion to dismiss was narrowly denied based solely on PO's misleading and incorrect representation of a pleading in *NYU v. ResMed Inc., C.A.* No. 21-813-JPM (D. Del.). PO represented that Resmed Inc. "conceded to being the appropriate party for certain of the same products." EX1086, at 14. But Resmed Inc. admitted only that the accused systems were "sold in the United States" and denied the allegation that Resmed Inc. itself sold any of the accused products in the U.S. EX1085, ¶9. Notably, after full discovery, Resmed Inc. moved for summary judgment that it was incorrectly named. The motion is still pending.

Third, PO argues that "Res[m]ed Inc. and Petitioner share the same litigation counsel, and there is overlap between the witnesses appearing on the initial disclosure on both." Irrelevant. Resmed Corp. pays and directs counsel in this proceeding. EX1080; EX1081; *see also Jazz Pharm.*, at 12 (finding no RPI despite shared outside counsel). And of course, the witnesses overlap because PO accused the same products despite incorrectly naming Resmed Inc. in Delaware.

Fourth, PO falsely states that Petitioner "identified Res[m]ed Inc. as having a direct financial interest in the litigation's outcome" on a corporate disclosure statement. Mot., 3. Petitioner did no such thing. Rather, Petitioner identified Resmed Inc. as an entity that "may" have a pecuniary interest as a corporate parent, consistent with the purpose of corporate disclosure statements—to assist the court in evaluating

potential recusal or conflicts. EX2041, at 2.

Last, PO argues the “Res[m]ed Corp. aligned itself with Res[m]ed Inc. by incorporating Res[m]ed Inc.’s invalidity contentions and answer and affirmative defenses from the Delaware.” Mot., 3. But adopting the defenses of another party (related or not) from another litigation against the same plaintiff is common practice. No coordination is necessary to recite Resmed Corp. “incorporates by reference [the defenses in the Delaware case].” *See, e.g.*, EX2040, ¶205.

C. The Fractus Case

PO argues that “in [Petitioner’s] most recent Petition against Fractus, S.A....it named Res[m]ed Inc. as an RPI.” Mot., 7. But again, Resmed Inc. was named because it was a named defendant in the parallel litigation. In fact, Fractus has since voluntarily dismissed Resmed Inc. upon information that Resmed Corp. (not Resmed Inc.) performs the relevant activities identified in the Complaint. EX1082. Accordingly, PO’s reliance on “litigation coordination evidence” lacks merit.

D. Resmed Corp. funds and directs Dr. Kirkness in this proceeding

Financial records confirm Dr. Kirkness’s engagement here is paid by Resmed Corp. Nguyen Decl., ¶¶3–4; EX1080; EX1081. Dr. Kirkness’s other Resmed engagements prove nothing about who funds or controls *this IPR*.

IV. CONCLUSION

Petitioner respectfully requests that the Board deny PO’s motion to terminate.

Dated: March 5, 2026

Respectfully submitted,

By: / Lisa K. Nguyen /
Lisa K. Nguyen (Reg. No. 58,018)
PAUL HASTINGS LLP
1117 S. California Avenue
Palo Alto, CA 94304
Telephone: 650-320-1800
lisanguyen@paulhastings.com

Counsel for Petitioner
RESMED CORP.

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2026, a true and correct copy of the foregoing
**PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO
TERMINATE** is being served by electronic mail on Patent Owner's counsel of
record listed below, pursuant to its Mandatory Notices:

Jeffrey H. Price (Reg. No. 69,141)
Jenna Fuller (Reg. No. 74,212)
Jeffrey Eng (Reg. No. 63,189)
**HERBERT SMITH FREEHILLS KRAMER
(US) LLP**
1177 Avenue of the Americas
New York, NY 10036
Email: Jeffrey.Price@hsfkramer.com
Email: Jenna.Fuller@hsfkramer.com.
Email: Jeffrey.Eng@hsfkramer.com
Email: svdocketingus@hsfkramer.com

Dated: March 5, 2026

Respectfully submitted,

By: / Lisa K. Nguyen /
Lisa K. Nguyen (Reg. No. 58,018)
PAUL HASTINGS LLP
1117 S. California Avenue
Palo Alto, CA 94304
Telephone: 650-320-1800
lisanguyen@paulhastings.com

Counsel for Petitioner
RESMED CORP.