

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RESMED CORP.,  
Petitioner,

v.

CLEVELAND MEDICAL DEVICES, INC.,  
Patent Owner.

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

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

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	2
III. ARGUMENT.....	3
A. ResMed Inc. is an Unnamed RPI .....	4
1. ResMed Inc. and Petitioner Share Officers and Offices.....	4
2. ResMed Inc. Controls Petitioner’s Legal Proceedings .....	5
IV. CONCLUSION.....	7

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Aylo Freesites Ltd. v. Dish Techs. L.L.C.</i> , No. IPR2024-00940, Paper 71 (P.T.A.B. Jan. 9, 2026) .....	5, 7
<i>Aylo Freesites Ltd. v. Dish Techs. L.L.C.</i> , No. IPR2024-00940, Paper 75 (P.T.A.B. Feb. 3, 2026).....	1, 4
<i>Cleveland Medical Devices Inc., v. ResMed Inc.</i> , No. 22-cv-00794, Dkt. No. 1 (D. Del. June 16, 2022) .....	2
<i>Cleveland Medical Devices Inc., v. ResMed Inc.</i> , No. 22-cv-00794, Dkt. No. 163 (D. Del. Oct. 2, 2023).....	2
<i>Radware, Inc. v. F5 Networks, Inc.</i> , No. IPR2017-01185, Paper 9 (P.T.A.B. Oct. 11, 2017).....	4, 5
<i>ResMed Corp. v. Fractus, S.A.</i> , No. IPR2026-00191, Paper 1 (P.T.A.B. Jan. 2, 2026) .....	7
<i>Sirius XM Radio, Inc. v. Fraunhofer-Gesellschaft zur Förderung der Angewandten Forschung E.V.</i> , No. IPR2018-00681, Paper 12 (P.T.A.B. Sept. 6, 2018).....	4, 7
<b>Statutes</b>	
35 U.S.C. § 312(a)(2).....	1, 2, 3, 4
35 U.S.C. § 315(b) .....	1, 4, 7
<b>Other Authorities</b>	
37 C.F.R. § 42.8(b)(1).....	1

**PATENT OWNER'S EXHIBIT LIST**

<b>Exhibit</b>	<b>Description</b>
2001	Intentionally Omitted
2002	Intentionally Omitted
2003	Intentionally Omitted
2004	Excerpts of Plaintiff and Counterclaim Defendant ResMed Corp.'s Initial Invalidity and Unenforceability Contentions cover pleading, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 23-cv-02221-BMB (N.D. Ohio), served on July 15, 2024
2005	Excerpts of Defendant ResMed Inc.'s Initial Invalidity Contentions cover pleading from <i>Cleveland Med. Devices, Inc. v. ResMed, Inc.</i> , No. 22-cv-00794-JLH (D. Del.) (the "Delaware Case"), served on February 21, 2023
2006	Excerpts of Plaintiff ResMed Corp.'s Response and Affirmative Defenses to Defendant's Second Amended Counterclaims for Patent Infringement, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB, Dkt. No. 75 (N.D. Ohio), filed on April 25, 2024
2007	Excerpts of Declaration of James Hannah in Support of Defendant CleveMed's Opposition to Plaintiff ResMed's Motion for Temporary Stay Pending Mediation, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 23-cv-02221-BMB, Dkt. No. 87-1 (N.D. Ohio), filed on August 21, 2024
2008	Excerpts of Declaration of Lisa Kobialka in Support of Defendant CleveMed's Opposition to Plaintiff ResMed's Motion to Stay, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 23-cv-02221-BMB, Dkt. No. 100-1 (N.D. Ohio), filed on January 24, 2025
2009	Excerpts of ResMed Corp.'s Reply in Support of its Motion to Stay, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 23-cv-02221-BMB, Dkt. No. 101 (N.D. Ohio), filed on January 31, 2025

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

Exhibit	Description
2010	Excerpts of Defendant Cleveland Medical Devices, Inc.'s Memorandum in Support of its Motion to Dismiss Plaintiff's Complaint for Declaratory Judgment of Noninfringement, or to the Extent Not Granted, to Transfer, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 23-cv-00500-TWR-JLB, Dkt. No. 10-1 (S.D. Cal.), filed on June 5, 2023
2011	<i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB, Dkt. No. 87-5, Declaration of Hani Kayyali in Support of Patent Owner's Opposition to Motion to Stay Pending Mediation (N.D. Ohio), filed on August 21, 2024
2012	Excerpts of Petitioner's parent company's (ResMed) Q4 FY2024 Earnings call, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB, Dkt. No. 87-6 (N.D. Ohio), filed on August 21, 2024
2013	Excerpts of Defendants' Initial Validity and Enforceability Contentions Pursuant to L.P.R. 3.7, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB (N.D. Ohio), served on August 5, 2024
2014	Case Management Order, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB, Dkt. No. 54 (N.D. Ohio), filed on January 10, 2024
2015	Excerpts of Exhibit H01 – List of Obviousness Combinations from Defendant's Supplemental Invalidity Contentions, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB (N.D. Ohio), served on January 9, 2025
2016	M.C. Bagnato, et al., "Comparison of AutoSet and polysomnography for the detection of apnea-hypopnea events," <i>Braz. J. Med. Biol Res.</i> , vol. 33(5), May 2000

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

<b>Exhibit</b>	<b>Description</b>
2017	Salmi, T., et al., "Evaluation of automatic analysis of SCSB, airflow and oxygen saturation signals in patients with sleep related apneas," Chest, vol. 96, no. 2, Aug. 1989, available at <a href="https://go.gale.com/ps/i.do?id=GALE%7CA12682650&amp;sid=googleScholar&amp;v=2.1&amp;it=r&amp;linkaccess=fulltext&amp;issn=00123692&amp;p=AONE&amp;sw=w&amp;userGr%E2%80%A6&amp;userGr&amp;userGroupName=anon%7E92eb47a3&amp;aty=open-web-entry">https://go.gale.com/ps/i.do?id=GALE%7CA12682650&amp;sid=googleScholar&amp;v=2.1&amp;it=r&amp;linkaccess=fulltext&amp;issn=00123692&amp;p=AONE&amp;sw=w&amp;userGr%E2%80%A6&amp;userGr&amp;userGroupName=anon%7E92eb47a3&amp;aty=open-web-entry</a>
2018	Kelly Pneumatics webpage - How Does a CPAP Machine Work? – printed on May 9, 2025
2019	Duan, Zhenhai, et al., "Push vs. Pull: Implications of Protocol Design on Controlling Unwanted Traffic" (USENIX July 7, 2005)
2020	Bunny webpage, "What is the Hypertext Transfer Protocol (HTTP)?" available at <a href="https://bunny.net/academy/http/what-is-http-hypertext-transfer-protocol/#">https://bunny.net/academy/http/what-is-http-hypertext-transfer-protocol/#</a> , dated March 12, 2025
2021	Declaration of Jeffrey H. Price
2022	Declaration of Dr. David A. Borkholder in Support of Patent Owner's Response
2023	Transportation.gov webpage, "Continuous Positive Airway Pressure (CPAP) Machines," available at <a href="https://www.transportation.gov/resources/individuals/aviation-consumer-protection/assistive-device-guides/continuous-positive#:~:text=Basic">https://www.transportation.gov/resources/individuals/aviation-consumer-protection/assistive-device-guides/continuous-positive#:~:text=Basic</a> , dated August 12, 2025
2024	Cleveland Clinic webpage, "CPAP Machine: What It Is, How It Works & Side Effects," available at <a href="https://my.clevelandclinic.org/health/treatments/22043-cpap-machine">https://my.clevelandclinic.org/health/treatments/22043-cpap-machine</a> , dated October 24, 2025
2025	Apnea Hypopnea Index (AHI), dated December 23, 2023, available at <a href="https://www.resmed.co.in/blogs/apnea-hypopnea-index">https://www.resmed.co.in/blogs/apnea-hypopnea-index</a>

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

Exhibit	Description
2026	Declaration of Alan R. Schwartz, M.D., <i>ResMed Corp. v. Cleveland Medical Devices, Inc.</i> , No. PGR2024-00012, Ex. 1020 (P.T.A.B. Dec. 13, 2023)
2027	K. Sutherland, et al., "Efficacy versus Effectiveness in the Treatment of Obstructive Sleep Apnea: CPAP and Oral Appliances," <i>Journal of Dental Sleep Medicine</i> , Vol. 2, No. 4, 2015
2028	K. Abu, et al., "Obstructive sleep apnea diagnosis and beyond using portable monitors," <i>Sleep Medicine</i> , Vol. 113, 260-274, Jan. 2024
2029	N. Ghahjaverestan, et al., "Sleep apnea severity based on estimate tidal volume and snoring features from tracheal signals," <i>J. Sleep Res.</i> , Vol. 32, No. 2, Sept. 2021
2030	Cambridge Dictionary, Definition of "into" available at <a href="https://dictionary.cambridge.org/us/dictionary/english/into">https://dictionary.cambridge.org/us/dictionary/english/into</a> , dated October 24, 2025
2031	Merriam-Webster Dictionary, Definition of "into" available at <a href="https://www.merriam-webster.com/dictionary/into">https://www.merriam-webster.com/dictionary/into</a> , dated October 24, 2025
2032	Declaration of Dr. Michael Goodrich in Support of Patent Owner's Contingent Motion to Amend and Request for Preliminary Guidance
2033	U.S Patent Application No. 11/266,899
2034	Online Learning Platform webpage, "What is single-tier, Two-tier and Three-tier Architecture of Software?" available at <a href="https://statelearner.org/what-is-single-tier-two-tier-and-three-tier-architecture-of-software">https://statelearner.org/what-is-single-tier-two-tier-and-three-tier-architecture-of-software</a> , dated July 17, 2025
2035	AlgoMaster webpage, "Client-Server Architecture," by Ashish Singh, available at <a href="https://algomaster.io/learn/system-design/client-server-architecture">https://algomaster.io/learn/system-design/client-server-architecture</a> , dated September 8, 2025
2036	Intentionally omitted
2037	Intentionally omitted

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

Exhibit	Description
2038	Intentionally omitted
2039	Intentionally omitted
2040	Excerpts of Plaintiff ResMed Corp.'s Response and Affirmative Defenses to Defendant's Second Amended Counterclaims for Patent Infringement, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB, Dkt. No. 75 (N.D. Ohio), filed on April 25, 2024
2041	Notice of Party with Financial Interest, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB, Dkt. No. 6 (S.D. Cal.), filed on April 19, 2023
2042	ResMed Corp., Business Filing Details – Office of Minnesota Secretary of State, dated February 11, 2026, available at <a href="https://mblsportal.sos.mn.gov/Business/SearchDetails?filingGuid=f207cb20-a3d4-e011-a886-001ec94ffe7f">https://mblsportal.sos.mn.gov/Business/SearchDetails?filingGuid=f207cb20-a3d4-e011-a886-001ec94ffe7f</a>
2043	Michael Fliss – ResMed Executive Team Bios, dated February 11, 2026, available at <a href="https://www.resmed.com/en-us/about-us/executive-team/">https://www.resmed.com/en-us/about-us/executive-team/</a>
2044	ResMed Executive Team Bios, ResMed Webpage, dated February 11, 2026, available at <a href="https://www.resmed.com/en-us/about-us/executive-team">https://www.resmed.com/en-us/about-us/executive-team</a>
2045	U.S. Securities and Exchange Commission, Form 10-K for ResMed Inc. for the fiscal year ended June 30, 2025
2046	Defendant ResMed Inc.'s First Supplemental Disclosure Statement, <i>Cleveland Med. Devices, Inc. v. ResMed, Inc.</i> , No. 22-cv-00794-GBW (D. Del.), served on June 15, 2023
2047	Plaintiff ResMed Corp.'s Initial Disclosures, <i>ResMed Corp. v. Cleveland Med. Devices, Inc.</i> , No. 1:23-cv-02221-BMB (N.D. Ohio), served on January 2, 2024

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

<b>Exhibit</b>	<b>Description</b>
2048	Deposition Transcript of Jason P. Kirkness, Ph.D., <i>ResMed Corp. v. Cleveland Medical Devices, Inc.</i> , Case No. IPR2025-00247, taken on February 4, 2026

## I. INTRODUCTION

This proceeding should be terminated because the Petitions do not identify all real parties in interest (“RPIs”) as required by 35 U.S.C. § 312(a)(2) and 37 C.F.R. § 42.8(b)(1). The record confirms that ResMed Inc.—Petitioner’s parent, financial consolidator, and the entity that coordinates litigation strategy, funds work, and directly benefits from these challenges—is an omitted RPI. Despite acknowledging that ResMed Inc. is an RPI in a bevy of other cases between the parties, it abruptly changed course and omitted ResMed Inc. here without explanation. Aside from Petitioner’s earlier concessions, 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.

The Office has made clear that it will enforce § 312(a)(2). As the *Corning Optical* memorandum states, “[t]he integrity of PTAB proceedings depends on knowing who is behind a petition—who funds it, directs it, and/or benefits from it” (Ex. 3001 at 4), and the Office will now enforce the requirement to identify all RPIs. And under *Aylo*, a petitioner’s correction to add an omitted RPI “requires according the Petition a new filing date.” *Aylo Freesites Ltd. v. Dish Techs. L.L.C.*, No. IPR2024-00940, Paper 75 at 3 (P.T.A.B. Feb. 3, 2026). When the proper RPI disclosure here necessarily results in a new filing date, the Petitions become time-barred under 35 U.S.C. § 315(b) and the proceedings must be terminated.

## II. FACTUAL BACKGROUND

CleveMed and ResMed Inc. have been engaged in litigation since 2022, when CleveMed's initiated the Delaware Action, asserting U.S. Patent No. 10,076,269 among others. *Cleveland Medical Devices Inc., v. ResMed Inc.*, No. 22-cv-00794, Dkt. No. 1 (D. Del. June 16, 2022). In that case, the court rejected ResMed Inc.'s contention that it was not the proper defendant in view of earlier concessions that it was "the appropriate party for certain of the same products accused in this action." *Id.*, Dkt. No. 163 at 13-14 (D. Del. Oct. 2, 2023).

While the Delaware litigation was pending, ResMed Corp. petitioned for IPR of the '269 patent, naming itself and ResMed Inc. as RPIs. IPR2023-00565, Paper 1 at 5 n.1 ("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)."). In the same Petition, however, ResMed Corp. hid behind ResMed, Inc., when arguing that it would be inappropriate to reject the petition under *Fintiv*. *Id.* at 5 ("Also, importantly, Petitioner is *not* party to parallel litigation – the suit identified above (Sec. I.B.) was filed against a separate entity, ResMed Inc. – so the *Fintiv* factors should all weigh against discretionary denial.").

ResMed Corp. later filed for declaratory-judgment of non-infringement regarding U.S. Patent No. 11,602,284 ("284 Patent"), and Patent Owner countered with claims of infringement against ResMed Corp. and ResMed Inc., asserting

infringement of the '284 Patent and the patents currently involved in proceedings before the Board.<sup>1</sup> In that case, ResMed Corp. aligned itself with ResMed Inc. by incorporating ResMed Inc.'s invalidity contentions and answer and affirmative defenses from the Delaware case. *See* Ex. 2040 (No. 23-cv-02221, Dkt. No. 75 at ¶¶ 205, 224, 259 (N.D. Ohio Apr. 25, 2024)). ResMed Corp. also identified ResMed Inc. as having a direct financial interest in the litigation's outcome. Ex. 2041 (No. 23-cv-02221, Dkt. No. 6 at 2 (N.D. Ohio Apr. 19, 2023)).

This pattern of naming both entities continued in the post-grant context. In December 2023, ResMed filed a PGR petition challenging the '284 patent and again named ResMed Corp. and ResMed Inc. as RPIs. PGR2024-00012, Paper 2 at 4 (P.T.A.B. Dec. 13, 2023). Only later, in a follow-on IPR challenging the '284 Patent, and in the Petitions now pending before the Board, did ResMed abruptly omit ResMed Inc. as an RPI. *See* IPR2025-00157, Paper 1 at 71 (P.T.A.B. Nov. 15, 2024); *see also e.g.*, IPR2025-00247, Paper 1 at 72 (P.T.A.B. Jan. 10, 2025). Petitioner offered no explanation for its shift, which irreconcilable with the record.

### **III. ARGUMENT**

35 U.S.C. § 312(a)(2), mandates that a Petition cannot be considered unless it identifies all RPIs, including those who control or have the opportunity to control

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<sup>1</sup> Patent Nos. 11,690,512; 11,375,921; 11,786,680; 11,857,333; and 11,872,029.

this proceeding. The PTAB's *Corning Optical* memorandum confirms that the Office will enforce § 312(a)(2)'s RPI requirement and emphasizes that the integrity of PTAB proceedings depends on knowing who is behind a petition, including who funds, directs, and/or benefits from it. *Corning Optical* Memo at 4. Further, under *Corning Optical*, "any Petition corrected to disclose additional RPIs must be given a new filing date." *Aylo*, No. IPR2024-00940, Paper 75 at 3. Here, the record shows ResMed Inc. exercised control, direction, and has a direct financial stake in these challenges, yet Petitioner identified only ResMed Corp. Because correcting the Petition's required disclosures results in a new filing date, it is barred under § 315(b) and thus, the Board must terminate the proceeding.

**A. ResMed Inc. is an Unnamed RPI**

ResMed Inc. is an RPI in these proceedings. There is no question that there is significant relationship between the parties because ResMed Corp. is a fully-owned subsidiary of ResMed, Inc. *Sirius XM Radio, Inc. v. Fraunhofer-Gesellschaft zur Förderung der Angewandten Forschung E.V.*, No. IPR2018-00681, Paper 12 at 4-6 (P.T.A.B. Sept. 6, 2018); *Radware, Inc. v. F5 Networks, Inc.*, No. IPR2017-01185, Paper 9 at 8-20 (P.T.A.B. Oct. 11, 2017).

**1. ResMed Inc. and Petitioner Share Officers and Offices**

Like in *Sirius* and *Radware*, ResMed Inc. and Petitioner share executive officers and a physical business address. *Id.* Minnesota business records for

Petitioner show that its Chief Executive Officer is Michael Fliss and the Principal Executive Office address 9001 Spectrum Center Blvd., San Diego, California 92123. Ex. 2042. Michael Fliss is also the Chief Revenue Officer for ResMed Inc. and is listed on ResMed's Leadership team webpage. Ex. 2043; Ex. 2044. The 2025 Form 10-K for ResMed Inc. shows its address as being 9001 Spectrum Center Blvd., San Diego, California 92123 and lists ResMed Corp. as a "significant subsidiary." Ex. 2045 at 1, 251. The significant overlap in corporate leadership between Petitioner and ResMed Inc. and the sharing of physical offices is "indicative of corporate blurring" necessitating the inclusion of ResMed Inc. as an RPI. *Radware*, No. IPR2017-01185, Paper 9 at 13; *Aylo Freesites Ltd. v. Dish Techs. L.L.C.*, No. IPR2024-00940, Paper 71 at 7 (P.T.A.B. Jan. 9, 2026) (finding "common controlling directors" and co-reliance on business services warrant identification as RPI).

## **2. ResMed Inc. Controls Petitioner's Legal Proceedings**

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, including those involved in the same district court litigation as the current patents in IPR. *See* IPR2023-00565, Paper 42 at 3; PGR2024-00012, Paper 1 at 4; *see also* *Aylo*, No. IPR2024-00940, Paper 71 at 7 (finding prior identification of RPI in IPRs pertaining to similar technology evidence that the party should be identified in the present case). Indeed, while Patent Owner was litigating the '269

Patent against ResMed Inc., ResMed Corp. inserted itself into the IPR proceeding against the '269 Patent and filed for declaratory judgment against the '284 Patent, starting the Ohio matter. In both litigations, ResMed Inc. and Petitioner share the same litigation counsel, and there is overlap between the witnesses appearing on the initial disclosures in both. Ex. 2046 at 2-3 (identifying Gregory Dench and Michael Pinczuk); Ex. 2047 at 3 (identifying Gregory Dench and Michael Pinczuk).

Further 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.” Ex. 2045 at 101-102 (emphasis added).

Dr. Kirkness' 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 Inc. routinely exercises such control over Petitioner's matters. Ex. 2048 (Kirkness Tr. (IPR2025-00247)) at 13:19-14:2 (unable to identify the entity that is paying his fees); *id.* at 8:5-13:18 (discussing contracts received from ResMed Inc.); *see also* Ex. 1004 at 1, 7-8 (showing multiple contracts with ResMed Inc.); *id.* at 15, 18 (describing multiple engagements with ResMed Inc.).

Dr. Kirkness has also represented ResMed Inc. before the PTAB, and current PTAB docket searches show no other PTAB proceedings where Petitioner omitted ResMed Inc. as an RPI. *See, e.g.*, IPR2022-00993, Exs. 1046-1047 (P.T.A.B. Mar. 8, 2023). In fact, in its most recent Petition against Fractus, S.A. that was filed by the same counsel representing Petitioner in the pending IPRs, it named ResMed Inc. as an RPI without any reservations. *ResMed Corp. v. Fractus, S.A.*, No. IPR2026-00191, Paper 1 at xiv (P.T.A.B. Jan. 2, 2026). Thus, there is no excuse for not naming ResMed Inc. as an RPI here.

Based on ResMed Inc.'s "full ownership of Petitioner, its identical management composition, and evidence of its past [and current] control in legal matters involving Petitioner," ResMed Inc. is required to be identified as an RPI in the Petitions. *Sirius XM Radio*, No. IPR2018-00681, Paper 12 at 6; *Aylo*, No. IPR2024-00940, Paper 71 at 7. Since correction of the Petitions would accord it a new filing date that would be beyond the one-year deadline under § 315(b), the Petitions should be dismissed.

#### **IV. CONCLUSION**

Based on the foregoing, Patent Owner respectfully requests the Petitions in IPR2025-00158, IPR2025-00159, IPR2025-00160, IPR2025-00246, and IPR2025-00247 be dismissed and the proceedings terminated.

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

Respectfully submitted,

Dated: February 23, 2026

/Jeffrey H. Price/

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(Case No. IPR2025-00246)

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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>	February 23, 2026
<i>Manner of service</i>	Electronic Filing and Electronic Mail (PH-ResMed-CleveMed@paulhastings.com)
<i>Documents served</i>	PATENT OWNER'S AUTHORIZED MOTION TO TERMINATE
<i>Persons Served</i>	Paul Hastings LLP Lisa K. Nguyen David M. Tennant Grace Wang Eric E. Lancaster Howard Herr Kamilah Alexander Maksim Mints Rachel Wu Hankinson

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