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# PTAB Oral Argument

ResMed Corp. v.

Cleveland Medical Devices, Inc.

**April 29, 2026**

Case No.: IPR2025-00246

Patent No.: 11,857,333

Kramer Levin is now HSF Kramer

## IPR2025-00246 ('333 Patent) – Grounds

Ground	Challenged Claims	35 U.S.C. §	References
1	*15-17, 20-24, and 26-29	103	Toge, Kumar
2	15-18, 20-24, and 25-29	103	Toge, Kumar, Norman
3	19	103	Toge, Kumar, Burton
4	19	103	Toge, Kumar, Norman, Burton

\*Claim 15 is the only challenged independent claim.

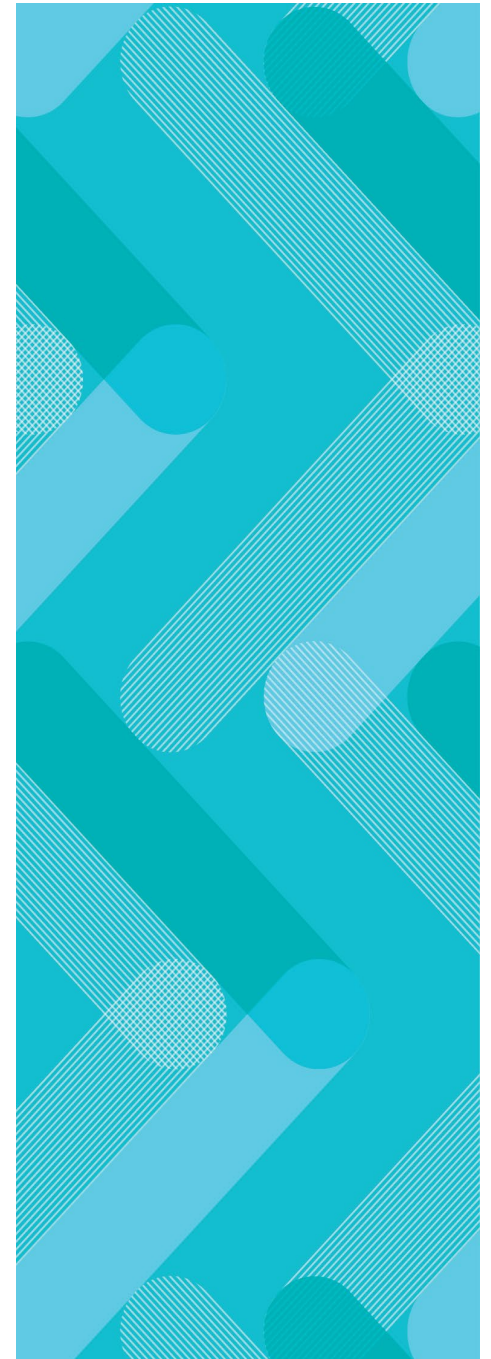
DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

## Summary of the Arguments

- Toge in view of Kumar does not teach a “quantified level of severity data,” as properly defined (**Ground 1**).
- Toge in view of Kumar and Norman does not render obvious determining a “quantified level of severity data” using a “processor . . . integrated into the PAP or CPAP device” (**Ground 2**).

**Toge in View of Kumar Does Not Teach a  
“Quantified Level of Severity Data”  
(Ground 1)**

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## **Toge's Tidal Volume is Not a "Quantified Level of Severity Data" as Properly Construed**

- Petitioner argues that Toge's tidal volume is a "quantified level of severity data."
- However, Toge's tidal volume does not constitute a "quantified level of severity data" under the proper construction of the term.

## Claim Construction: “Quantified Level of Severity Data”

CleveMed	Petitioner
Plain & ordinary meaning, <i>which is</i> a calculated value that represents how dire a patient’s symptoms are.	Plain and ordinary meaning.

POR at 8-9; Reply at 2-6

- CleveMed’s proposed plain and ordinary meaning is consistent with the claim language and how the term is used in the clinical setting.
- Petitioner fails to construe and explain how the claim term is met by Toge’s tidal volume.

POR 8-9; Sur-Reply at 3-7

# CleveMed's Construction is Consistent With How "Quantified Level of Severity Data" is Used in the Clinical Setting

## CleveMed's Claim Construction Expert

32. Based upon the disclosures in the '921, '029 and '333 Patents, a POSITA understands how to calculate the symptom data in order to derive the severity of the patient's symptoms. '921 Patent at 18:51-21:67; '333 Patent at 22:36-24:45, 45:34-46:51; '029 Patent at 18:66-22:13. Since the time of the invention, a commonly used term within the clinical sleep setting has been "level of severity" which clinicians understand to represent the how dire a patient's calculated symptom data may be. For example, a clinician would recognize a patient's symptom's as severe if their data shows a respiratory disturbance index (RDI) or apnea-hypopnea index (AHI) of greater than or equal to 30 events per hour of sleep. The RDI is the sum of all the apneas, hypopneas, and Respiratory Effort Related Arousals (RERAs)

Ex. 1058, ¶ 58

***Level of severity*** is commonly used to indicate how dire a patient's calculated symptoms are, as represented by indices, for example.

## “Quantified Level of Severity Data” is Not a Mere Statistic of a Measured Condition

- Petitioner’s expert, Dr. Schwartz, in a related proceeding testified that a “level of severity” is **not** mere statistics of measured conditions.

Dr. Schwartz

47. Thus, a POSITA, having considered these statements, would

understand that the “symptom data of a level of severity ...,” “level of severity,” and “index of a level of severity ...” disputed there are **not merely statistics of the measured conditions alone, such as pressure, leak, airflow, pulse rate, or oxygen saturation (e.g., SaO<sub>2</sub> or SpO<sub>2</sub>), snore, or flattening index,** that *could be used to determine stroke* related parameters. Instead, according to the Patentee’s

Providing Claim-Scope Related Testimony Concerning the “Level of Severity.”

Ex. 2026, ¶ 47

Toge’s “tidal volume” is a mere statistic of a patient’s measured respiration.

Sur-Reply at 4-5 (citing Ex. 2026, ¶ 47)

## Toge's Tidal Volume is a Mere Statistic of Measured Respiration, Not a "Quantified Level of Severity Data"


- Petitioner argues that Toge's tidal volume is a "quantified level of severity" because "[I]t represents the level of airway obstruction." Pet. at 15, Reply at 6-7.
- **But** a "level of severity" is **not** "merely statistics of the measured conditions alone, such as airflow." Ex. 2026, ¶ 47.
- Tidal volume (airflow) measures respiration.

Note that portable monitor (PM)-AHI is different from the set cutoffs, e.g., PM-AHI of 10.3 events/h satisfies the AHI cutoff of 5 with a sensitivity of 82.8% and specificity of 76.0% [44]. Sound=breathing sound/snoring.  
Respiration=airflow or tidal volume; RR=respiratory rate. #, ##, ### refers to % accuracy for classifying breathing

Ex. 2028 at 11

Tidal Volume  Quantified Level of Severity Data

Sur-Reply at 7-9 (citing Ex. 2028 at 11, 13); POR at 10-12



**Toge in View of Kumar and Norman Does Not Render Obvious the Determination of a “Quantified Level of Severity Data” Using a “Processor . . . Integrated Into the PAP or CPAP Device” (Ground 2)**

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE



## No Reference Teaches the Claim Limitation, and Petitioner Fails to Establish Motivation

- **First**, neither Toge nor Norman teaches determining a “quantified level of severity data” by a “processor . . . integrated into the PAP or CPAP device” because:
  - Toge’s tidal volume is not a “quantified level of severity data,” and its analysis is performed at a physician-side computer.
  - Norman does not disclose a processor which is integrated inside a PAP or CPAP device, and which performs the analysis therein.
- **Second**, Petitioner fails to show why a POSITA would have combined the elements in Toge and Norman to achieve the claim limitation.

## “Processor . . . Integrated Into the PAP or CPAP Device” Means Inside the Device

CleveMed	Petitioner
Plain & ordinary meaning, which is the processor is <b>inside</b> the PAP or CPAP <b>device</b> .	Processor is inside the PAP or CPAP <b>system</b> .

providing a therapy to a subject using a PAP or CPAP device while sleeping, the PAP or CPAP comprising a flow or pressure sensor, and a processor both which are integrated into the PAP or CPAP device;

'333 Patent at Claim 15

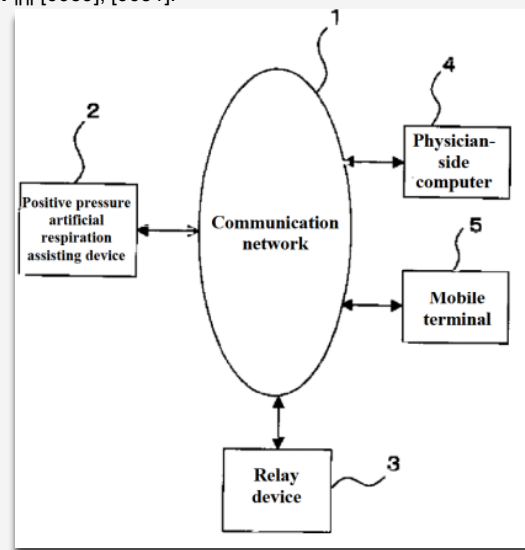
- Petitioner does **not dispute** that “integrated into” means “inside.”
- But Petitioner improperly substitutes “**device**” as recited in the claim with **system** to broaden the claim scope to a processor “inside” the “PAP or CPAP system.”

# Toge's and Norman's Analysis is Done Outside the PAP Device

## Toge:

- Tidal volume is a statistic of a measured condition that is sent to a **physician-side computer 4** (below) where trend data is reviewed, and any further analysis would be performed.

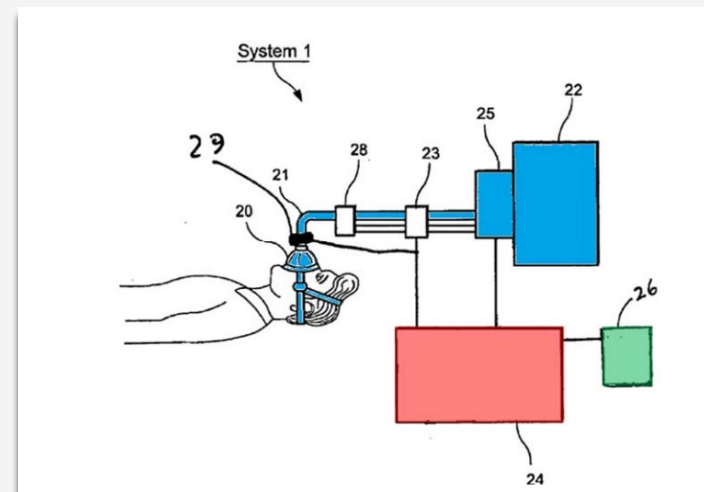
Toge at ¶¶ [0039], [0051].



Toge at Fig. 1

## Norman:

- Processing arrangement 24** and **titration device 26** (which perform calculations) are **outside** the **PAP device**.



Norman at Fig. 6 (annotated)

Sur-Reply at 11-12 ; POR at 13-14  
(citing Norman at Fig 6 (annotated))

## No Motivation to Combine Toge and Norman to Arrive at the Claimed Invention

- Petitioner fails to adequately explain why a POSITA would have modified Toge's system to perform Norman's analysis at Toge's PAP device rather than at its physician-side computer.
- Petitioner argues that “Petition describes **generally** why a POSITA would have been motivated to further combine Norman's automated titration CPAP device with the Toge and Kumar system.” Sur-Reply at 12 (quoting Reply at 12-13) (alteration in original).

**BUT** this generic rationale “bears no relation to any specific combination of prior art elements” and does not “explain why a person of ordinary skill in the art would have combined elements from specific references in the way the claimed invention does.” ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc., 694 F.3d 1312, 1328 (Fed. Cir. 2012).

Sur-Reply at 12-13



# **CONTINGENT MOTION TO AMEND**

## Summary of the Arguments

- The ancestral patent applications provide written description support for the patient's cell phone adjusting the PAP/CPAP therapy limitation.
- Toge in view of Kumar does not teach a patient's cell phone adjusting the PAP/CPAP therapy.
- Toge in view of Kumar does not render obvious a remote internet site hosted on at least one server.
- Toge in view of Kumar does not render obvious a patient's cell phone that receives and displays a quantified level of severity data.



# Written Description Support

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## Substitute Claim: A Patient's Cell Phone Adjusting the PAP/CPAP Therapy

wherein the therapy administered by the PAP or CPAP device is configured to be adjusted by the first software on the subject's cellular phone and the remote computer of the clinician, technician, or physician based on the wirelessly transmitted collected data, quantified level of severity data, or the therapy efficacy data.

## The Ancestral Applications in the Priority Chain

- In the priority chain, U.S. Patent Appl. No. 15/641,715 (Ex. 1002, “**715 application**”), from which the ’333 Patent matured into, is a continuation-in-part of U.S. Appl. No. 11/266,899 (Ex. 2033, “**899 application**”). Ex. 1001, Cover.

### Related U.S. Application Data

(63) Continuation of application No. 13/074,901, filed on Mar. 29, 2011, now Pat. No. 9,730,632, which is a  
(Continued)

continuation of application No. 11/879,934, filed on Jul. 19, 2007, now Pat. No. 7,942,824, which is a continuation-in-part of application No. 11/266,899, filed on Nov. 4, 2005, now Pat. No. 8,172,766.

# The Ancestral Applications Provide Written Description Support

Ancestral Disclosure	Ancestral Citations
<p>Patient's cell phone determining severity of the patient's sleep disorder.</p>	<ul style="list-style-type: none"> <li>• Disclosing that sensors are “tethered to a . . . <b>cell phone</b>” and that signals from sensors are analyzed using a “<b>processor</b>” to determine the “<b>severity</b> of the subject's sleeping disorder and/or symptoms” Ex. 2033 (“<b>899 application</b>”) at 33:14-21; Ex. 1002 (“<b>715 application</b>”) at 29:22:-29 (similar).</li> <li>• Disclosing that the “<b>processor</b>” may be “part of a remote communications station” that can be a “<b>cell phone</b>”. ‘899 application at 33:22-23; ‘715 application at 30:9-31:12 (similar).</li> </ul>
<p>Patient adjusts the patient's CPAP/PAP therapy based on an output value such as the level of severity.</p>	<ul style="list-style-type: none"> <li>• Disclosing that an <b>output</b> is provided “which is then used . . . by a clinician or the <b>subject to adjust the device.</b>” ‘899 application at 38:24-39:3; 715 application (same).</li> <li>• The ‘715 application further clarifies that a <b>device can remotely program the therapy</b> of the PAP/CPAP device. ‘715 application at 11:30-12:1.</li> </ul>

**“Taken together,” these disclosures provide written description support for a patient’s cell phone adjusting PAP/CPAP therapy.** *Hologic, Inc. v. Smith & Nephew, Inc.*, 884 F.3d 1357, 1362-63 (Fed. Cir. 2018) (statements in the specification “[t]aken together” provide written description support).

Reply to Opp. at 2-3

# The Ancestral Applications Provide Written Description Support

PO's Expert

Ancestral Disclosure	Ancestral Citations
Patient's cell phone determining severity of the patient's sleep disorder.	<ul style="list-style-type: none"> <li>Disclosing that sensors are "tethered to a . . . cell phone" and that signals from sensors are analyzed using a "processor" to determine the "severity of the subject's sleeping disorder and/or symptoms" Ex. 2033 ("899 application") at 33:14-21; Ex. 1002 ("715 application") at 29:22-29 (similar).</li> <li>Disclosing that the "processor" may be "part of a remote communications station" that can be a "cell phone". '899 application at 33:22-23; '715 application at 30:9-31:12 (similar).</li> </ul>
Patient adjusts the patient's CPAP/PAP therapy based on an output value such as the level of severity.	<ul style="list-style-type: none"> <li>Disclosing that an <b>output</b> is provided "which is then used . . . by a clinician or the <b>subject to adjust the device</b>." '899 application at 38:24-39:3; '715 application (same).</li> <li>The '715 application further clarifies that a <b>device can remotely program the therapy</b> of the PAP/CPAP device. '715 application at 11:30-12:1.</li> </ul>

11. It is my opinion that taken together, these statements clearly convey to a POSITA that the patient can adjust their PAP/CPAP therapy using their cell phone, which receives collected sensor data and determines the severity of the patient's sleep disorder that the adjustment is based on.

12. My opinion is consistent with the inventors' statements made during prosecution:

The present invention *allows not only the patient* but their clinicians to be aware of the efficacy of the patient's therapy as presently configured, *and to adjust or titrate the therapy efficiently, quickly and remotely*.

The determination or calculation of these apnea events are performed on either the PAP device or the patient's cellular phone.

Ex. 1002 at 308 (emphasis added).

Ex. 2049, ¶¶ 11-12

Reply to Opp. at 3-4

## Petitioner's Written Description Challenge Looks for Express Recitation in Isolated Passages

- Petitioner's written description challenge is based on viewing passages in isolation for express recitation of a cell phone adjusting PAP therapy. Opp. at 3-7; Sur-Reply to MTA at 5.
- **But** written description need not recite the invention in haec verba and is based on the disclosure as a whole.
  - *Indivior Inc. v. Dr. Reddy's Lab'ys, S.A.*, 930 F.3d 1325, 1349 (Fed. Cir. 2019) (finding that although no embodiment disclosed the claimed component, the "application does direct a skilled artisan to the claimed polymer component"); *Allergan USA, Inc. v. MSN Lab'ys Priv. Ltd.*, 111 F.4th 1358, 1375 (Fed. Cir. 2024).

Reply to Opp. at 4-5

# The Disclosures as a Whole Are Viewed From the Perspective of a POSITA

- Petitioner’s challenge fails as a POSITA would understand that an “intermediary device” is a cell phone that can adjust the patient’s therapy:

## PO’s Expert

14. For instance, with respect to the ’715 application, ResMed alleges that [t]here is no disclosure of the ‘intermediary device’ . . . [that] adjusts the PAP/CPAP therapy.” Paper 31 (“Opp.”) at 3. But this is based on what is expressly disclosed in the passage for the term “intermediary device,” not what is conveyed to a POSITA who has read the disclosure as a whole. I note that ResMed also looks for what is expressly recited in “remotely program[] the PAP or CPAP” and adjustment “by a clinician or the subject” passages. *Id.* at 3-4 (stating that the device that “‘remotely programs’ the PAP/ CPAP is not disclosed or described”), 4 (“by a clinician or the subject” does not “disclose or suggest that it is a patient’s cell phone”). It is my opinion that in so doing, ResMed ignores the specification statements describing a cell phone acting as intermediary device that receives sensor data and determines a level of severity with that data used by the patient or as a part of a “closed-loop or partially closed-loop system” to adjust their therapy. For example, the ’715

Ex. 2049, ¶ 14

application discloses the following, which a POSITA would understand to include every element of the proposed claim amendment:

The signals from the *one or more sensors* used in various embodiments of the present invention are preferably *analyzed using a processor and software* that can quantitatively estimate or *determine the severity* of the subject’s sleeping disorder or symptoms. Using either a microcontroller of a data acquisition system, a separate computer, base station or processor, *a PDA, a processor on a device for treating the subject’s sleeping disorder or a combination of these processors*, the *severity of the subject’s sleeping disorder* and/or symptoms including apneas is determined and is *used at least in part to regulate the physical or chemical treatment of the subject*. Also optionally, the one or more sensors used in the system of the present invention can also be tethered to a computer, base station, *cell phone, a PDA* or some other form of processor or microprocessor.

Ex. 1002 (’715 application) at 30:9-18 (emphasis added)].

Reply to Opp. at 4 (citing Ex. 2049, ¶ 14)

**Toge in View of Kumar Does Not Teach a  
Patient's Cell Phone Adjusting the  
PAP/CPAP Therapy**

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE



## Petitioner Improperly Relies on Expert Testimony to Gap-fill the Missing Limitation

- Neither Toge nor Kumar disclose a **patient's** cell phone adjusting the patient's therapy. MTA at 17-18.
- Petitioner relies on its experts to fill in the missing pieces in the combination. Opp. at 23; Sur-Reply to Reply to Opp. at 8.

Pet. Expert

19 A. So it is my opinion that Toge, in view  
of Kumar, renders this limitation obvious.  
20 Q. Obvious. So neither disclosed the  
21 limitation, but what you're opining on is that  
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  
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.

Ex. 2050 at 53:17-54:6

Pet. Expert

10 A. Okay. I'm there.  
11 Q. Is it your position that -- your  
12 position is that Toge in view of Kumar disclosed  
13 this limitation; is that correct?  
14 A. Yes, to one of ordinary skill, yes.  
15 Q. Okay. Does either Toge or Kumar  
16 disclose the limitation themselves individually?  
17 A. I haven't really thought about that.  
18 I'm talking about the combination, and that's  
19 really what I'm talking about. Even in the  
20 original declaration I'm not pointing to one or  
21 the other; I'm pointing to the combination.

Ex. 2051 at 35:11-21

Reply to Opp. at 5 (citing Ex. 2050 at 53:5-18;  
Ex. 2051 at 35:15-21, 38:22- 39:23; Ex. 2049,  
¶¶18-20)

## Petitioner's Use of Expert Testimony is Procedurally Improper

- Petitioner's use of expert testimony to gap-fill the missing limitation violates the memorandum on "Enforcement and Non-Waiver of 37 C.F.R. § 42.104(b)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews" ("Memo").
  - "An opposition to a motion to amend effectively operates as a renewed petition as it reopens the record to introduce new art and arguments" and therefore should be subject to the Memo.
  - "[W]hen a petitioner does contest an amended claim, the Board is free to reopen the record to allow admission of any additional relevant prior art proffered by a petitioner." *Aqua Prods., Inc. v. Matal*, 872 F.3d 1290, 1314 (Fed. Cir. 2017).
- Petitioner claims that *Aqua Prods.* is irrelevant **but** provides no explanation supporting its claim. Sur-Reply to MTA at 6 n.1.

## Petitioner Uses Expert Testimony as a Wholesale Substitute for Reasoned Analysis and Evidentiary Support

- Petitioner’s experts allege that a POSITA would have found it obvious to modify Kumar’s patient cell phone with Toge’s physician’s mobile device to arrive at the claim limitation. Sur-Reply to MTA at 8.
  - **No record evidence supports that allegation.**
  - **Prosecution History:** “There was nothing like this using cellular phones, PAP therapy, cellular systems and the Internet at the time” where “not only the patient but their clinicians [can] be aware of the efficacy of the patient’s therapy as presently configured, and to adjust or titrate the therapy efficiently, quickly and remotely.” Ex. 1002 at 308.
- Expert testimony cannot be used as a wholesale substitute for reasoned analysis and evidentiary support.
  - *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016); *K/S Himpp v. Hear-Wear Techs.*, LLC, 751 F.3d 1362, 1365-66 (Fed. Cir. 2014).

Reply to Opp. at 6-7 (citing Ex. 1002 at 308).

**Toge in View of Kumar Does Not Render  
Obvious a Remote Internet Site Hosted  
on at Least One Server**

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE



## Substitute Claim: A Remote Internet Site Hosted on at Least One Server

transmitting, in either order, both 1) the collected data and/or the quantified level of severity data to a subject's cellular phone with downloadable first software via a radio frequency wireless link; and 2) the collected data and/or the quantified level of severity data to a remote internet site hosted on at least one server ~~the remote~~

MTA, Appendix A

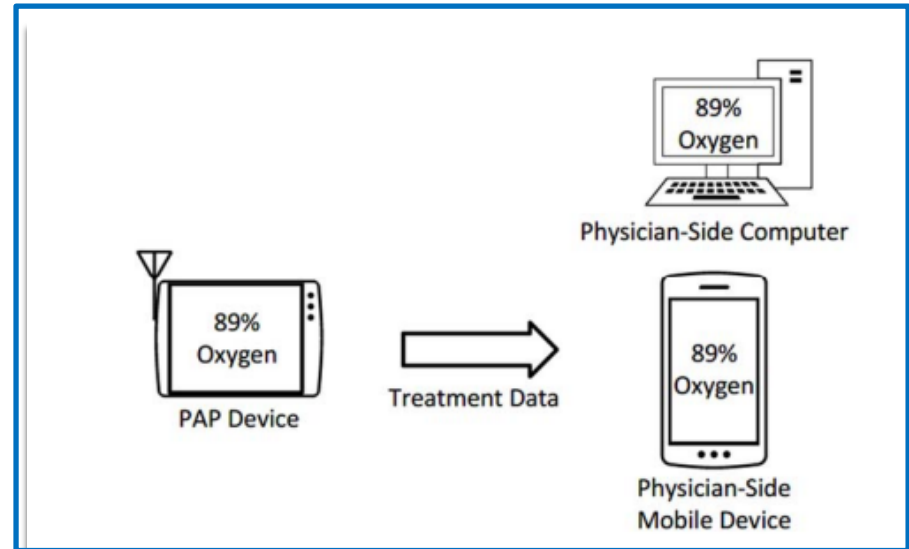
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## Toge Does Not Disclose a “Remote Internet Site”

- Petitioner does not dispute that Toge does not disclose a “remote internet site.” See Sur-Reply to MTA at 10-12.
- In Toge’s system, treatment data is sent from the PAP device to physician-side devices without a remote internet site (identified as a web server by Petitioner).



MTA at 19

## Petitioner's Proposed Toge in View of Kumar Configurations

Petitioner proposes two configurations:

- (1) where Kumar's web server could be implemented at "various locations" and
- (2) where Toge's physician-side computer is implemented as the web server.

**Both Configurations Fail.**

## Petitioner's "Various Locations" Configuration Fails

Pet. Expert

9 A. I think, for example, if you look at  
10 Paragraph 25 of my declaration, I'm talking  
11 about Kumar explains that, "The data may be  
12 stored in a secured storage device at the  
13 central server for later access, replay, and/or  
14 analysis."

15 So what I'm trying to explain here and  
16 in other portions of my declaration, and also in  
17 the original declaration, together with the  
18 petition, is that a POSITA could have understood  
19 that Kumar's -- the browser-based engine could  
20 have been placed at various locations; to provide  
21 the benefits that Kumar is talking about. But

Ex. 2051 at 22:9-21

3 And so like I just explained to you, one of  
4 ordinary skill, based on the disclosures in  
5 Kumar, would have understood that the  
6 browser-based engine could have been located at  
7 various locations. And I kind of talked about  
8 that, for example, in Paragraph 25, which is  
9 what I read to you earlier and I explained to  
10 you earlier. But one particular configuration  
11 is where the physician-side computer of Toge  
12 could have been implemented as a, quote, Remote  
13 Internet Site hosted on at least one server  
14 using the implementation details taught by  
15 Kumar.

Ex. 2051 at 24:3-15

This "various locations" allegation does not show **why** a POSITA would have implemented a web server at any one of these undisclosed "various locations" and **how** such implementation would arrive at the claimed "remote internet site hosted on at least one server."

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Reply to Opp. at 10 (citing Ex. 2051 at 21:25-24:1)

## No Motivation to Combine

- Petitioner’s physician-side computer configuration fails because:
  - A web server and client on the same machine is “not suitable for a web application.”
  - Separating server and client onto different machines is a fundamental security practice for web applications.
  - Separating server and client onto different machines ensures performance for web applications.

## A Web Server Implemented on Toge's Physician-side Computer Would *Not* Have Been Suitable for a Web Application

- A web server and client on the same machine is “not suitable for a web application” as proposed. Ex. 2054 at 4.

It means that the user interface, business, layers are accessible by the application under the same local drive. Both the client and server reside in the same machine. It is the simplest application architecture used. But this tier is not suitable for a web application. As it can only access data available in a single computer or server.

Ex. 2054 at 4

### 2. Servers for Multiple Tiers of Client/Server

In a typical client/server based application, the client process and server process can be on the same computer, or distributed in two or more computers. A single-tier client/server application consists of a single layer that supports the user interface, the business rules, and the data manipulation processes all on one computer. This kind of application is rarely used today because it will not take advantage of the distributed computing environment.

Ex. 2055 at 4

However, unlike more advanced systems, it cannot transmit information from one client machine to another.

Ex. 2056 at 3

# Because of Security Reasons, a Web Server is Separated from a Client in a Web Application

- Dr. Goodrich stated that because separating server and client onto different machines is a fundamental security practice for web applications, a POSITA would **not** have implemented both web server and client on Toge’s physician-side computer. Reply to Opp at 11.

Because a web server introduces multiple security vulnerabilities, implementing a system as a multiple tier distributed architecture that embodies the SoD principle ensures multiple defenses to protect sensitive data from cybersecurity attacks. For example, an attacker who gains a foothold through a client-side application might be able to exploit vulnerabilities in the operating system to gain administrative control over an entire machine. Thus, if this machine is also a web server, then the attacker can then access, modify, and/or destroy server data. That is, with a collocation of web client and web server (in violation of the SoD principle), as suggested by Dr. Chatterjee and ResMed, a malicious actor who gains access to the local machine has direct access to both the client and server software and data. See, e.g., Ex. 2060.

Ex. 2049, ¶ 29



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## Because of Performance Reasons, a Web Server is Separated from a Client in a Web Application

- Dr. Goodrich stated that a POSITA would **not** have implemented a web server and client on the same machine because multiple services implemented on the same machine would have decreased performance. Reply to Opp. at 11.

[0046]-[0047], [0055]-[0057]. For example, a POSITA would understand that implementing multiple services, such as a web server and the client software on the same machine would create contention for the CPU(s), memory, network bandwidth, and input/output resources on that machine, which would lead to decreased system performance. As shown in a whitepaper discussing “Factors Impacting Scalability,”

PO's Expert

Ex. 2049, ¶ 31 (emphasis added)

## Petitioner's Distributed System Theory Was Not Set Forth in its Opposition

- In its Sur-Reply, Petitioner argues that “Toge’s physician-side computer implemented with Kumar’s web server would be part of a distributed computer system.” Sur-Reply to MTA at 11.
- **BUT** it never advanced a distributed implementation configuration in its opposition.
- Testimony from Petitioner’s expert demonstrates that the “**clear location**” to place the web server would be “**in the physician-side computer.**”

12 I'm also talking about in my  
13 declarations, both the original one as well as  
14 here, that specifically what one clear location  
15 for a POSITA would have been to place the  
16 browser-based engine in the physician-side  
17 computer of Toge, and I identify various

Ex. 2051 at 26:14-17

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