

CLEVELAND MEDICAL DEVICES INC., an Ohio Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 22-794-GBW-CJB
	)	
RESMED INC., a Delaware Corporation,	)	
	)	
Defendant.	)	
	)	

Patent Owner, CleveMed - Ex. 2002, p. 1

I. INTRODUCTION

Pursuant to Section 3(d) and (g) of the Court’s Scheduling Order dated November 3, 2022 (D.I. 40) and the modifications thereto (D.I. 51), Defendant ResMed Inc. (“ResMed”) hereby provides its Amended Initial Invalidity Contentions, including the charts attached hereto as Appendices A - G (collectively, the “Amended Initial Contentions”) to Plaintiff Cleveland Medical Devices, Inc. (“CleveMed”). The Amended Initial Contentions address the invalidity of the asserted claims of U.S. Patent Nos. 10,426,399 (“the ’399 patent”); 10,925,535 (“the ’535 patent”); 11,064,937 (“the ’937 patent”); 11,202,603 (“the ’603 patent”); 10,028,698 (“the ’698 patent”); 11,234,637 (“the ’637 patent”); and 10,076,269 (“the ’269 patent”) (collectively, the “Asserted Patents”). In addition, based on its investigation to date, ResMed hereby produces the prior art references on which these Contentions are based and other documents as mandated by Paragraph 3(c) of the Court’s Scheduling Order.

II. RESERVATION OF RIGHTS

ResMed’s Amended Initial Contentions address the asserted claims identified by CleveMed in its Infringement Contentions dated January 13, 2023. Should the Court allow CleveMed to later assert infringement of additional claims not identified in CleveMed’s Infringement Contentions, or to supplement its infringement contentions with additional infringement theories with respect to the asserted claims, ResMed reserves the right to supplement its Initial Contentions to assert invalidity of those additional claims and/or to assert invalidity based on the additional infringement theories.

ResMed’s discovery and investigation in connection with this lawsuit are ongoing, including discovery from CleveMed. Thus, these Amended Initial Contentions are based on information obtained to date. ResMed reserves the right to supplement its Initial Contentions in response to information learned in fact or expert discovery, including identification of additional

All of the reasons discussed above for combining references are incorporated by reference into the claim charts whether or not specifically stated.

D. The '269 Patent

1. Identification of Prior Art

The following prior art patents and published patent applications relate to the invalidity of the asserted claims of the '269 patent. Each of the following may qualify as prior art as of an earlier date than the listed date, *e.g.*, an earlier publication or filing date. ResMed reserves the right to supplement the priority dates for the below listed references as discovery continues.

Prior Art Patents and Published Applications	Filed Date	Issue/Publication Date
United States Patent No. 6,167,258 ("Schmidt")	10/09/1998	12/26/2000
PCT Publication No. WO 2005/096737 ("Farrell")	03/30/2005	10/20/2005
United States Patent Application Publication No. 2005/0211249 ("Wagner")	05/19/2005	09/29/2005
United States Patent Application Publication No. 2002/0022973 ("Sun")	03/21/2001	02/21/2002
United States Patent Application Publication No. 2002/0165462 ("Westbrook")	12/28/2002	11/07/2002
United States Patent No. 8,069,852 to Burton et al. ("Burton")	04/08/2005	12/06/2011
United States Patent Application Publication No. 2005/0239838 ("Edgar")	04/25/2005	10/27/2005
United States Patent Application Publication No. 2001/0018557 ("Lynn")	02/06/2001	08/30/2001
PCT Pub. No. WO 02/078775 ("Genger")	04/02/2001	10/10/2002
United States Patent Application Publication No. 2003/0236450 ("Kocinski")	03/20/2003	12/25/2003
United States Patent Application Publication No. 2003/0213489 ("Mechlenburg")	04/28/2003	11/20/2003

Prior Art Patents and Published Applications	Filed Date	Issue/Publication Date
United States Patent No. 5,704,345 to Berthon-Jones (“Berthon-Jones”)	11/4/1994	01/06/1998

The following prior art non-patent publications relate to the invalidity of the asserted claims of the '269 patent.

Prior Art Publications	Date of Publication
Jasemian and Arendt Nielsen, <i>Evaluation of realtime, remote monitoring telemedicine system using the Bluetooth protocol and a mobile phone network</i> , Journal of Telemedicine and Telecare 2005, Vol. 11, Issue 5, at 256 (“Jasemian”)	2005
B. Woodward and M.F.A. Rasid, <i>Wireless Telemedicine: The Next Step</i> , 4th Int’l IEEE EMBS Special Topic Conference on Information Technology Applications in Biomedicine, 2003, at 43 (“Woodward”)	2003
Mohd Fadlee A. Rasid and Bryan Woodward, <i>Bluetooth Telemedicine Processor for Multichannel Biomedical Signal Transmission via Mobile Cellular Networks,</i> IEEE Transactions on Information Technology in Biomedicine, Vol. 9, No. 1, March 2005, at 35 (“Rasid”)	03/2005
Mohd Fadlee A Rasid, <i>Multi-Channel GPRS-Based Mobile Telemedicine System With Bluetooth and J2ME Interfaces</i> , Doctoral Thesis, Department of Electronic and Electrical Engineering, Loughborough University (October 2005) (“Rasid Thesis”)	10/2005
D. Alan Lankford, <i>Wireless CPAP Patient Monitoring: Accuracy Study</i> , Telemedicine Journal and e-Health, Vol. 10, No. 2, 2004, at 162 (“Lankford”)	2004
R. Paradiso, et al., <i>Wearable Health Care System for Vital Signs Monitoring</i> , 4 th Annual IEEE Conf. on Information Technology Applications in Biomedicine, 2003, at 283 (“Paradiso”)	2003
M. J. Moron, E. Casilari, R. Luque and J. A. Gazquez, <i>A wireless monitoring system for pulse-oximetry sensors</i> , 2005 Systems Communications (ICW'05, ICHSN'05, ICMCS'05, SENET'05), 2005, at 79-84 (“Moron”)	2005

Prior Art Publications	Date of Publication
Guilleminault C, van den Hoed J, and Mitler MM, Clinical overview of the sleep apnea syndromes. In: C Guilleminault and WC Dement (Eds), SLEEP APNEA SYNDROMES, Alan R Liss, New York, 1978, pp. 1-12 (“Guilleminault 1978”);	1978
Christian Guilleminault and Vivien C. Abad, Obstructive sleep apnea syndromes, Med. Clin. N. Am. 88, 2004, pp. 611-630 (“Guilleminault 2004”)	2004
Francoise J. Roux and Janet Hilbert, <i>Continuous positive airway pressure: new generations</i> , Clin. Chest Med. 24, 2003, at 315-342 (“Roux”)	2003
The AASM Manual for the Scoring of Sleep and Associated Events, 2007 (“AASM Manual”)	2007
Kirianaki, et al., DATA ACQUISITION AND SIGNAL PROCESSING FOR SMART SENSORS, 2002, John Wiley & Sons Ltd (“Kirianaki”)	2002
Elena, et al., Design of a Mobile Telecardiology System Using GPRS/GSM Technology, Engineering in Medicine and Biology, 2002, Departamento Ingeniería Electrónica, Escuela Superior Ingenieros (“Elena”)	2002

The following prior art products and systems, in addition to their documentation (incorporated herein), relate to the invalidity of the asserted claims of the ’269 patent.

Prior Art Products/Systems	Date of Availability
ResMed AutoSet T device	Prior to Nov. 4, 2004
ResMed AutoSet Spirit device	Prior to Nov. 4, 2004
ResMed S7 Elite device	Prior to Nov. 4, 2004
ResMed S8 AutoSet Vantage device	Prior to Nov. 4, 2005
ResMed AutoScan/ResScan software and related hardware, including but not limited to AutoScan 3.1, AutoScan 3.3, and ResScan 3.0	Prior to Nov. 4, 2004, and at least prior to Nov. 4, 2005
ResMed ResLink	Prior to Nov. 4, 2004

Prior Art Products/Systems	Date of Availability
ResMed ResTraxx device and related software, including the ResMed ResTraxx Data Center (RDC) (a.k.a. Somnotraxx, a.k.a. Spectrum Clinical)	Prior to March 2005, and at least prior to Nov. 4, 2005
ResMed AutoSet Respond	Prior to Nov. 4, 2004

The above table identifies individual components of the prior art ResMed systems; identification of specific systems is provided at Exhibit G05, which makes clear which of the above-identified hardware and software components together as single system anticipate or render obvious the asserted claims of the '269 patent. In addition to the products in the chart above, ResMed continues to investigate the identities of the individuals or entities involved in the first sale, offer for sale, or public use of prior art products that were made using the systems recited by the asserted claims of the '269 patent. ResMed will produce additional documents relating to the invalidity of the asserted claims by those products as they become available.

2. Initial Contentions

The asserted claims of the '269 patent are anticipated by at least the prior art identified and detailed in Exhibits G01-G06. ResMed contends that each item of prior art identified above and/or in the accompanying claim charts anticipates one or more of the asserted claims of the Asserted Patents, either expressly, implicitly, or inherently, as understood by a person having ordinary skill in the art. In some instances, ResMed may treat certain prior art as anticipatory where certain elements are inherently present.

If the finder of fact determines that some limitation of a given claim was not disclosed by an asserted reference, ResMed contends that the prior art references identified in Exhibits G01-G06, in combination with the knowledge and skill of a person of ordinary skill in the art at the time of the alleged invention and/or in combination with the disclosures of other prior art,

Dated: April 5, 2023

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CERTIFICATE OF SERVICE

I, Brian A. Biggs, do hereby certify that on this 5th day of April, 2023, the attached **DEFENDANTS' AMENDED INVALIDITY CONTENTIONS** was served upon the following counsel of record via electronic mail:

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