

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. IPR2023-00565
U.S. Patent No. 10,076,269

**DECLARATION OF BENU WELLS IN SUPPORT OF
PATENT OWNER'S PRELIMINARY RESPONSE**

I, Benu Wells, declare as follows:

1. I am special counsel at the law firm of Kramer Levin Naftalis & Frankel LLP, attorneys for Patent Owner Cleveland Medical Devices, Inc. (“Patent Owner”), in the above-captioned *inter partes* review proceeding involving Petitioner ResMed Corp. and its associated entities (“Petitioner”). I provide this Declaration in support of Patent Owner’s Preliminary Response based upon my personal knowledge.

2. In the co-pending litigation, *Cleveland Medical Devices, Inc. v. ResMed Inc.*, C.A. No. 22-794-GBW, discovery is well underway as both Patent Owner and Petitioner have served and responded to multiple sets of discovery requests. Specifically, the parties have served a combined total of 166 requests for production (99 requests from Patent Owner and 67 requests from Petitioner), 7 requests for admission (all from Patent Owner), and 40 interrogatories (22 requests from Patent Owner and 18 requests from Petitioner). Of those, 2 requests for production and 1 interrogatory remain outstanding, with responses due in July 2023. The parties served initial disclosures on October 20, 2022, that identified relevant witnesses and categories of documents. ResMed Inc. amended its initial disclosures in June 2023.

3. In response to their respective requests for production, the parties have produced thousands of documents. Specifically, Petitioner has produced over

200,000 pages of documents and Patent Owner has produced over 63,000 pages of documents. The parties have also produced videos and other types of files that would not be included in the provided page counts.

4. The parties jointly filed their respective claim construction briefing in the co-pending litigation on June 21, 2023. The Court has scheduled the claim construction hearing for August 1, 2023.

5. On June 7, 2023, Patent Owner served a Fed. R. Civ. P. 30(b)(6) notice of deposition on Petitioner. Patent Owner and Petitioner are negotiating deposition topics and scheduling, and plan to conduct all depositions of fact witnesses before fact discovery closes on September 26, 2023, with substantial completion of document production having been completed May 15, 2023.

6. I declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on June 27, 2023, in New York, New York.

/ Benu Wells/
Benu Wells