

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.,
Petitioner,

v.

CLEVELAND MEDICAL DEVICES, INC.,
Patent Owner.

IPR2023-00565
Patent 10,076,269 B2

Before SHERIDAN K. SNEDDEN and CYNTHIA M. HARDMAN,
Administrative Patent Judges.

HARDMAN, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

By email dated July 17, 2023, Petitioner requested leave to file a reply to Patent Owner's Preliminary Response. *See* Ex. 3002. Petitioner indicated that Patent Owner partially opposed Petitioner's request. *See id.* On July 19, 2023, Judges Hardman and Snedden conducted a conference call with counsel for the parties, including Mr. Heintz for Petitioner and Mr. Price for Patent Owner. No court reporter was present.

During the call, Petitioner requested authorization to file a reply addressing Patent Owner's arguments that the Petition should be denied (1) for alleged failure to address whether certain claim terms should be treated as means-plus-function terms (and if so, for failure to provide an explicit construction); (2) under *Fintiv*; and (3) under 35 U.S.C. § 325(d)/*Advanced Bionics*. Patent Owner opposed Petitioner's request, except it did not oppose the authorization of limited briefing to address an alleged factual error in Patent Owner's Preliminary Response regarding certain dates that Petitioner alleged are in error. Each party presented arguments regarding whether Petitioner should be authorized to file the requested brief. Patent Owner stated that should the Board grant Petitioner's request to file a reply, Patent Owner requested an opportunity to file a sur-reply.

Upon consideration of the parties' respective arguments during the call, the Board determined that additional briefing would be helpful to the Board's consideration of the issues, and granted Petitioner's request, subject to the deadlines and limitations outlined in the Order below.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner may file a reply to Patent's Owner's Preliminary Response, limited to addressing the three issues referenced above, where the reply shall be no more than 10 pages and filed no later than July 27, 2023;

FURTHER ORDERED that Patent Owner may file a sur-reply to Petitioner's reply, limited to addressing the issues raised in Petitioner's reply, where the sur-reply shall be no more than 10 pages and filed no later than August 7, 2023;

FURTHER ORDERED that neither party is authorized to file any additional evidence with its brief; and

FURTHER ORDERED that no other briefing is authorized at this time.

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