

From: [Heintz, James M.](#)
To: [Director PTABDecision Review](#)
Cc: [Miller, Tiffany](#); [Sikorski, Ed](#); [Hannah, James](#); [Price, Jeffrey H.](#); [Fuller, Jenna](#); jeng@kramerlevin.com; svdocketing@kramerlevin.com
Subject: IPR2023-00565 (ResMed Corp. v. Cleveland Medical Devices, Inc.) - Petitioner's Request for Rehearing by the Director
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[IPR2023-00565 PETITIONER'S REQUEST FOR DIRECTOR REVIEW.pdf](#)

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Dear Director Vidal,

Petitioner ResMed Corp. respectfully notifies the parties and the USPTO of its filing of the attached Request for Rehearing by the Director ("Request"), Paper 14, filed pursuant to 37 C.F.R. § 42.71(d) and the Revised Interim Director Review Process adopted on July 24, 2023, of the decision by the Board denying institution (Paper 13) in IPR2023-00565.

The Request presents the following issues, listed in order of priority, for which Petitioner seeks review:

1. Whether the Board abused its discretion by relying in its institution decision on new argument and evidence regarding a district court judge's caseload and anticipated time-to-trial that was presented for the first time in Patent Owner's Preliminary Sur-Reply in violation of a prior Board order and after denying Petitioner's request to address those new arguments and evidence; and
2. The important policy issue of whether an IPR petition should be denied because it adopts the same plain meaning construction of claim terms asserted by patent owner if the petitioner asserts in a parallel district court litigation an indefiniteness defense for those claim terms that the Board is precluded by statute from resolving

The first issue mirrors in certain respects one of the issues that led to Director's recent order in *Vector Flow, Inc. v. HID Global Corp.*, IPR2023-00353, Paper11 (August 10, 2023), vacating the institution decision in that case. This issue alone is sufficient reason to vacate the institution decision here and is ranked first for that reason. The second policy issue is also important because it is commonly confronted by parties before the Board in the context of means-plus-function limitations and has received inconsistent treatment at the Board, which has led to confusion on the part of practitioners and parties.

Respectfully submitted,

/s/ James M. Heintz

IPR2023-00565
Ex. 3100

Attorney for Petitioner ResMed Corp.

James M. Heintz

Chair, Post Grant Review Practice

T +1 703 773 4148

F +1 703 773 5008

M +1 202 997 7461

jim.heintz@us.dlapiper.com

DLA Piper LLP (US)

dlapiper.com



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