

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

Before ULRIKE W. JENKS, SHERIDAN K. SNEDDEN, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

JENKS, *Administrative Patent Judge*.

ORDER
Conduct of proceeding
37 C.F.R. § 42.5

On November 28, 2023, a conference call was held in the above-referenced proceeding regarding Petitioner's request for authorization to file a copy of the district court's claim construction order as an exhibit. *See* Ex. 3004, 2. Present on the call were counsel for the parties, Administrative Patent Judges Jenks, Snedden, and Hardman, and a court reporter. Petitioner agreed to file the transcript of the telephone phone conference as an exhibit.¹

Our rules allow for the submission of claim construction determinations by a federal court or the ITC. *See* Consolidated Trial Practice Guide² ("CTPG") at 47–48, *see* CPTG 48 ("[P]arties should submit a prior claim construction as soon as the decision is available."). Here, the claim construction order pertaining to the challenged patent issued after our earlier decision on institution (Paper 13), which has now been *vacated* by the Director. Paper 15. Petitioner requests authorization to submit the claim construction order from the parallel litigation. During the telephone conference, Patent Owner indicated that it does not oppose the filing of this document.

Petitioner, therefore, is granted authorization to file a copy of the claim construction order as an exhibit. Petitioner shall file this exhibit *after* the submission of the supplemental briefing by Petitioner and the supplemental response by Patent Owner as set out in the Director's Decision issued November 16, 2023. Paper 15, 5–6. We request that Petitioner file the exhibit at its earliest convenience but no later than December 29, 2023.

¹ Petitioner may file the transcript of the telephone conference at any time.

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

ORDER

Accordingly, it is:

ORDERED that Petitioner's request for authorization to file a copy of claim construction order is *granted*; and

FURTHER ORDERED that Petitioner shall file this document after the parties submit the supplemental briefing set out in Paper 15, and before December 29, 2023.

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