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Transcript of PTAB Board Call

Date: November 28, 2023

Case: ResMed Corporation -v- Cleveland Medical Devices, Inc. (PTAB)

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
4 FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
5 UNITED STATES PATENT AND TRADEMARK OFFICE
6

7 RESMED CORP.,
8 Petitioner,
9 v.

10 CLEVELAND MEDICAL DEVICES INC.,
11 Patent Owner.

12 IPR2023-00565

13 Patent 10,076,269 B1
14

15 PTAB BOARD CALL

16 Conducted Virtually

17 Tuesday, November 28, 2023

18 3:01 p.m. EST
19

20 Job No.: 516958

21 Pages: 1 - 10

22 Reported by: Pamela L. Beck

1 A P P E A R A N C E S

2 THE ADMINISTRATIVE PATENT JUDGES:

3 JUDGE ULRIKE W. JENKS, ESQUIRE

4 SHERIDAN K. SNEDDEN, ESQUIRE

5 CYNTHIA M. HARDMAN, ESQUIRE

6

7 ON BEHALF OF PETITIONER:

8 JIM M. HEINTZ, ESQUIRE

9 DLA PIPER LLP

10 One Fountain Square

11 11911 Freedom Drive

12 Suite 300

13 Reston, Virginia 20190-5602

14 (703) 773.4000

15

16 ON BEHALF OF PATENT OWNER:

17 JEFFREY H. PRICE, ESQUIRE

18 KRAMER LEVIN NAFTALIS & FRANKEL, LLP

19 333 Twin Dolphin Drive

20 Suite 700

21 Redwood Shores, California 94065

22 (650) 752-1700

1 P R O C E E D I N G S

2 JUDGE JENKS: Good afternoon. I'm Judge
3 Jenks, and we're here for a telephone conference per
4 Petitioner's request because they want to introduce
5 the District Court's claim construction.

6 Let me begin that we are dealing with
7 IPR2023-00565, Patent No. 10,076,269. Just let me
8 ask, is there a court reporter on the line?

9 MR. HEINTZ: Yes, Your Honor.

10 JUDGE JENKS: Would you be so kind as to
11 provide us with a transcript once this is complete.

12 MR. HEINTZ: Yes, Your Honor. This is
13 Jim Heintz for Petitioner, we arranged for the court
14 reporter and we will provide a transcript.

15 JUDGE JENKS: Thank you. I greatly
16 appreciate it. It allows me to take less notes at
17 the time.

18 Petitioner, you requested a telephone
19 conference, so let's begin with you.

20 THE REPORTER: I'm sorry, could we
21 identify everybody that's on the line.

22 JUDGE JENKS: Absolutely. Sure. I'm

1 Judge Jenks. With me on the phone is Judge Hardman
2 and Judge Snedden. Do you need spellings for those?

3 THE REPORTER: I have them. Thank you.

4 JUDGE JENKS: Please identify yourself,
5 counsel for Petitioner.

6 MR. HEINTZ: Yes. James Heintz, DLA
7 Piper for Petitioner. And it's just me on the call
8 for Petitioner today.

9 JUDGE JENKS: Patent Owner.

10 MR. PRICE: This is Jeffrey Price, Your
11 Honor, counsel for Patent Owner. And it is also
12 just me on the phone today for Patent Owner.

13 JUDGE JENKS: Thank you so much. All
14 right. So then let's begin. Petitioner, you may
15 begin.

16 MR. HEINTZ: Thank you, Your Honor. So
17 as mentioned in my email, my first question is
18 whether or not we are permitted to submit the
19 District Court's claim construction order as an
20 exhibit in this proceeding?

21 JUDGE JENKS: So at what point do you
22 want to submit it? Do you want to submit it before

1 the briefing or after you finish the briefing?

2 MR. HEINTZ: I would like to do it when
3 we submit the briefing, either before or --

4 JUDGE JENKS: So from Director Vidal's
5 decision, however, she said no additional briefing
6 is allowed at this time. So my preference for you
7 submitting the District Court's Claim Construction
8 would be after you finish the briefing per the
9 decision from Director Vidal.

10 And then once that's finished, I'm
11 amenable to you bringing in the District Court's
12 claim construction, because it certainly would
13 benefit us in making our decisions. Because the
14 prior decision has now been vacated, and we're
15 basically starting from scratch.

16 MR. HEINTZ: So if I understand
17 correctly, at the conclusion of our brief and Patent
18 Owner's brief, then we are to submit the --

19 JUDGE JENKS: Because I can ask for
20 additional information at any point in time. So I
21 just want the record to be completed before we start
22 bringing in the additional claim construction

1 briefing.

2 MR. HEINTZ: Okay. So I wait until
3 after --

4 JUDGE JENKS: After --

5 MR. HEINTZ: I'm sorry, Your Honor,
6 please proceed.

7 JUDGE JENKS: After Patent Owner submits
8 his reply to your briefing regarding -- I can't
9 remember what we have here. The briefing for the
10 supplemental response, the supplemental brief, your
11 supplemental briefing and Patent Owner's
12 supplemental response.

13 MR. HEINTZ: Okay. Thank you, Your
14 Honor, I understand. And are we authorized to do
15 that, or do I need to contact the Board after that
16 briefing is complete?

17 JUDGE JENKS: At this point I want to
18 first hear from Patent Owner, and then we will make
19 a decision as to how we go about it. So Patent
20 Owner, can we hear from you.

21 MR. PRICE: Yes, Your Honor, we don't
22 have any objections to having to mark an order filed

1 on schedule.

2 JUDGE JENKS: So would you be able with
3 me sending out an order, then, saying that after
4 briefing -- in response to Director Vidal's
5 decision, after that briefing is complete, we then
6 authorize Petitioner to file the claim construction
7 briefing from the District Court?

8 MR. PRICE: Right, no objection from the
9 Patent Owner, Your Honor.

10 JUDGE JENKS: Excellent. I will also
11 specify a particular date once I send out the order.
12 Is there anything else either of the parties would
13 like to discuss today?

14 MR. HEINTZ: Yes, Your Honor, again, Jim
15 Heintz for Petitioner. I noticed the reference to
16 Standard Operating Procedure 3 in your order last
17 week.

18 JUDGE JENKS: Uh-huh.

19 MR. HEINTZ: And I was concerned about
20 the reference to the potential six months until your
21 decision on the remand is issued. My question is
22 simply, is there anything we can do to facilitate an

1 earlier decision?

2 JUDGE JENKS: Well, the reason I put in
3 the six months, because at that point in time I had
4 no idea how much briefing we might need. So,
5 therefore, I decided to give me the most amount of
6 time to deal with the decision. Obviously I'm
7 hoping I can get it out before six months.

8 MR. HEINTZ: Great. Is there anything we
9 can do to assist you in that endeavor, Your Honor?

10 JUDGE JENKS: Right now I just need to
11 finish getting all the information, and then I can
12 start over.

13 MR. HEINTZ: Okay. Thank you, Your
14 Honor. That's all the questions that I have for
15 today.

16 JUDGE JENKS: Excellent. Anything else
17 from the Patent Owner?

18 MR. PRICE: Yeah, I don't think it
19 requires any response from the Patent Owner. So we
20 just thank you for your time today.

21 JUDGE JENKS: Thank you so much. Again,
22 I will issue an order granting that you can file the

1 papers. Thank you so much for your time today.

2 MR. HEINTZ: Thank you.

3 MR. PRICE: Thank you.

4 (Off the record at 3:08 p.m.)

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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2 I, Pamela L. Beck, the officer before whom the
3 foregoing proceedings were taken, do hereby certify
4 that the foregoing transcript is a true and correct
5 record of the proceedings; that said proceedings
6 were taken by me stenographically, and thereafter
7 reduced to typewriting under my supervision; and
8 that I am neither counsel for, related to, nor
9 employed by any of the parties to this case, and
10 have no interest, financial or otherwise, in its
11 outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 and affixed my notarial seal this 5th day of
14 December.

15
16 My commission expires January 14, 2027.

17
18 *Pamela L. Beck*
19 _____

20 NOTARY PUBLIC IN AND FOR THE
21 COMMONWEALTH OF PENNSYLVANIA
22

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