

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.
Petitioner

v.

CLEVELAND MEDICAL DEVICES, INC.
Patent Owner

Case IPR2023-00565
U.S. Patent No. 10,076,269 B1

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

I. INTRODUCTION

Patent Owner CleveMed’s Request for Director Review (“Request”) alleges the Board erred in applying the POSITA definition—to which CleveMed agreed—to rehash its baseless argument that Resmed’s expert, Dr. Sharony, is not a person of ordinary skill. *See* POR (Paper 29), 8-12; Pet.’s Reply (Paper 31), 4-8; PO’s Motion to Exclude (Paper 35); Pet.’s Opp. to Mot. to Exclude (Paper 37). The Final Written Decision (“FWD”) properly recognized that Dr. Sharony—a Ph.D in electrical engineering with 35+ years of experience—meets the agreed-upon definition of a person of ordinary skill in the art. FWD, 15-17, 83-85.

CleveMed also complains that the Board “erroneously credited” Dr. Sharony’s testimony for claims 8-14 (Request, 1-2), but the Board did not rely exclusively on Dr. Sharony’s analysis for claims 8-14 and instead relied on the disclosures in the prior art. FWD at 63-83, 85.

II. DR. SHARONY IS A PERSON OF ORDINARY SKILL IN THE ART

CleveMed’s core complaint is that Dr. Sharony does not have experience with “diagnostic sensor systems” (Request, 1), but this is plainly wrong. “Diagnostic sensor systems” is not limited to *medical* diagnostic sensor systems. Hearing Tr. (Paper 41), 25-27. Indeed, diagnostic sensor systems can be used by mechanics to diagnose problems with cars. Moreover, even if limited to medical diagnostic sensor systems, Dr. Sharony testified and the Board credited that Dr.

Sharony has “experience working with and analyzing physiological sensors, including but not limited to human activity sensors, heart rate and pulse sensors, and environmental sensors (e.g., proximity, temperature).” FWD, 15, 17, 84-85 (citing EX1004, ¶¶10, 14, 16). Thus, far from “redefining” the standard for a person of ordinary skill in the art, the Board properly found that “Dr. Sharony’s experience with physiological sensors used in diagnostic sensor systems” meets that standard. FWD, 84-85.

Dr. Sharony’s experience with pulse oximeters and other diagnostic sensor systems is directly relevant to the claims of the ’269 patent that recite electronics, processors, and transceivers adapted for measuring, filtering, processing, and transmitting signals from “a pulse oximeter” and other sensors, as well as the electronic connections between those sensors, processors, electronics, transceivers, and a PAP device. *See, e.g.*, EX1001, 23:53-57 (“a signal processing module comprising a first input adapted for connecting to a pulse oximeter sensor with a signal, electronics adapted for filtering and processing the signal, and an output adapted for outputting pulse oximetry sensor data.”).

CleveMed does not dispute that systems with sensors like pulse oximeters are *diagnostic sensor systems*. Rather, CleveMed argues that the Board misstated the POSITA standard by allegedly failing to use the word “systems” when crediting Dr. Sharony’s experience. But this is wrong. The Board found:

We are not persuaded by Patent Owner's contention that we should disregard Dr. Sharony's testimony because "*has no experience with diagnostic sensor systems* like CPAP machines," and therefore, is unqualified to testify about the location of sensors in a CPAP machine. PO Resp. 9; Tr. 25:1–2 (Dr. Sharony "does not have any experience in diagnostic sensor devices."). *Contrary to Patent Owner's contention*, Dr. Sharony testified that he has "experience working with and analyzing physiological sensors, including but not limited to human activity sensors, heart rate and pulse sensors, and environmental sensors (e.g., proximity, temperature). Ex. 1004 ¶ 10. Therefore, Dr. Sharony meets the requirements of a POSITA. FWD, 17 (emphasis added). The Board also fully considered CleveMed's arguments regarding Dr. Sharony's experience with diagnostic sensor *systems*. FWD, 13. Thus, the Board properly found that "Dr. Sharony is qualified as a POSITA in the pertinent art" FWD, 85.

It is CleveMed, not the Board, that tries to rewrite the POSITA definition. The Board extensively explored CleveMed's theory that "diagnostic sensor systems" *also* requires experience with PAP devices or medical diagnostics. Request, 8 ("systems that sense, diagnose, and treat *medical ailments*;" "POSITA, who also would have had experience working with 'diagnostic sensor systems,' like the claimed *PAP* device"). The Board even asked CleveMed for a definition of diagnostic sensor systems, but CleveMed failed to provide one and simply argued without any evidentiary support, as it does here, that the definition

requires “medical experience.” Hearing Tr. (Paper 41), 26-27. The Board fully considered and expressly rejected this unsupported argument. *Id.*; FWD, 16 (“What is not included in the definition of a POSITA, as agreed upon by the parties, is having medical degree or specific experience with sensors in CPAP machines.”), 13-15, 17.

Further, the Board acknowledged the portion of the undisputed definition of a POSITA that recites that “[a]n increase in experience could compensate for less education, and vice-versa.” FWD, 16-17, 84. Thus, even if Dr. Sharony lacked experience with diagnostic sensor systems (he does not), his Master’s degree, M.Phil., and Ph.D. in Electrical Engineering compensates for this. *Medtronic, Inc. v. Teleflex Life Scis. Ltd.*, No. IPR2020-01343, 2022 WL 557277, at *8 (P.T.A.B. Feb. 23, 2022) (rejecting argument that Petitioner’s expert did not meet the definition POSITA where “it is undisputed that ‘[e]xtensive experience and technical training might substitute for education.’”).

III. CLEVEMED’S ARGUMENTS ON CLAIMS 8-14 ARE INCORRECT

CleveMed argues that the Board erred by relying on Dr. Sharony’s testimony concerning “pharmaceutical treatments” for claims 8-14. Request, 1-2. But the Board did not rely exclusively on Dr. Sharony’s analysis for claims 8-14. FWD at 63-83, 85 (“our Final Written Decision does not rely on paragraphs 120–128 of Exhibit 1004.”); *see also Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363,

1374 (Fed. Cir. 2008) (“an expert is not the only source for evidence that it would be obvious for one skilled in the art to combine references.”). The Board’s analysis of claims 8-14 cites to Dr. Sharony only once—for the undisputed fact that “[a]wakening is a symptom of apnea or hypopnea, which are sleep disorders”—and does not rely on Dr. Sharony’s analysis of claims 8-14. *See* FWD at 75 (citing EX1004, ¶¶ 34-36). Instead, the Board relied on the evidence of record. FWD, 63-83 (citing Stahmann, Edgar, and Westbrook references to support its decision); *see also id.* at 72-73 (“Stahmann ’029 teaches administering pharmaceutical agents” to treat sleep disorders), 74-75 (citing Edgar’s use of *doxepin* to “treat a *sleep apnea disorder*” in a *CPAP*), 75 (quoting Westbrook’s disclosure that an “*apnea or hypopnea ... caus[es] the sleeper to awaken.*”).

CleveMed is also wrong that the Board “disregard[ed] the rebuttal testimony of Dr. Patil.” Request, 11. Even though Dr. Patil did not meet the POSITA definition, the Board considered his testimony but found it unpersuasive. FWD, 20, 79. Also, Dr. Patil agreed with the only fact for which the Board cited Dr. Sharony’s testimony. EX1018, ¶11 (“Sleep apnea causes patients to temporarily lose their breath during sleep, leading to ... waking up”).

IV. CONCLUSION

CleveMed’s Request should be denied for the reasons stated above.

Respectfully submitted,

Dated: June 10, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies service pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b) on the Patent Owner by **Electronic Mail** of this Petitioner's Reply to Patent Owner Supplemental Response.

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