

**CONFIDENTIAL**

RE: Validity Contentions  
For: Exhibit A04  
Case No. 1:23-cv-02221-BMB

**RE: Exhibit A04 - Validity of '284 Patent – Bao**

Cleveland Medical Devices, Inc. (“CleveMed”) provides this chart pursuant to L.P. R. 3.7 in opposition to the chart at Exhibit A01 provided by ResMed Corp. (“ResMed”) on July 15, 2024, addressing U.S. Patent No. 11,602,284 (“the ’284 patent”) in view of U.S. Patent App. Pub. No. 2016/0193437 A1 (“Bao”) as either anticipated, under pre-AIA 35 U.S.C. § 102, and/or as obvious, under 35 U.S.C. § 103. ResMed contends that Bao invalidates Claims 1, 2, 3, 6, 12, and 14-20 of the ’284 patent pursuant to 35 U.S.C. § 102 and/or 35 U.S.C. § 103, alone or in combination with other prior art. CleveMed denies this contention.

At the outset, Claim 1 of the ’284 patent is not anticipated or rendered obvious by Bao, and therefore due to Claims 2, 3, 6, 12, and 14-20’s respective dependencies from Claim 1, directly or indirectly, Bao does not anticipate or render obvious Claims 2, 3, 6, 12, and 14-20, alone or in combination, as demonstrated below. ResMed has failed to meet its burden that Bao meets any element of the asserted claims of the ’284 Patent, individually and/or in combination with other claim elements, and it only provides superficial quotes and boilerplate language without adequate explanation.

CleveMed provides these contentions to the extent it can ascertain ResMed’s invalidity contentions from its chart, which is vague and fails to sufficiently explain how disclosures in Bao satisfy the elements of the asserted claims and/or satisfy the Local Patent Rules. CleveMed does not, by this opposition, in any way admit that ResMed’s invalidity contentions satisfy the Local Patents Rules or that Bao is prior art or that ResMed’s invalidity contentions in its chart are properly disclosed or disclosed with sufficient detail.

CleveMed’s contentions herein are not intended to imply any position on claim construction. CleveMed reserves the right to amend these contentions if necessary following any claim construction order in this case and based on any claim construction positions that ResMed may take in this case. CleveMed reserves the right to propose any claim construction it considers appropriate and/or to contest any claim construction it considers inappropriate.

CleveMed responds only to the portions of Bao and/or any other references that ResMed quotes in its chart for each element. If ResMed is permitted to supplement its contentions, or rely on any other portions of the references it quotes for each element, CleveMed reserves the right to supplement these validity contentions accordingly. CleveMed also reserves the right to provide further detail regarding these contentions during expert discovery.

| US 11,602,284, Claim                                                                  |                                                                                                                                                                      |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. [pre] A positive airway pressure (PAP) sleep disorder treatment system comprising: | Bao does not disclose or render obvious a <i>positive airway pressure (PAP) sleep disorder treatment system</i> because Bao is directed towards a control system for |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | controlling a respiratory device. Bao at [0007].                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| [1.a] a non-transitory computer readable medium, the non-transitory computer readable medium comprising a first software, the first software executable by a first processor and configured to be used with a cell phone to display to a subject for viewing on the cell phone on to which the first software is downloaded an index of treatment efficacy of the subject using a PAP device, the first software used for displaying the index on the cell phone, the index based in part on data of severity of sleep disorder symptoms of the subject and data of usage of the PAP device by the subject, the data of severity of sleep disorder symptoms of the subject and the data of usage of the PAP device by the subject both calculated by the PAP device and received by the cell phone, the cell phone comprising at least one first radio frequency wireless transceiver, the first processor, the first software when downloaded and a display; | <p>Bao does not disclose or render obvious <i>a non-transitory computer readable medium, the non-transitory computer readable medium comprising a first software, the first software executable by a first processor and configured to be used with a cell phone to display to a subject for viewing on the cell phone on to which the first software is downloaded an index of treatment efficacy of the subject using a PAP device, the first software used for displaying the index on the cell phone, the index based in part on data of severity of sleep disorder symptoms of the subject and data of usage of the PAP device by the subject, the data of severity of sleep disorder symptoms of the subject and the data of usage of the PAP device by the subject both calculated by the PAP device and received by the cell phone, the cell phone comprising at least one first radio frequency wireless transceiver, the first processor, the first software when downloaded and a display</i>. ResMed merely provides block quotations of the alleged prior art without any explanation. As such, CleveMed has no notice of ResMed’s contentions with regard to this element. Thus, ResMed has failed to meet its burden to prove that this element is disclosed in the alleged prior art.</p> <p>Indeed, Bao is silent as to at least a non-transitory computer readable medium, an index of treatment efficacy, data of severity of sleep disorder symptoms, and a radio frequency wireless transceiver, and therefore cannot meet this claim element. Ex. A04 at 11 (ResMed admitting “Bao does not appear to disclose use of different forms of data (e.g. severity and usage) to produce the claimed ‘index of treatment efficacy’”).</p> <p>ResMed’s subsequent conclusory and unsupported argument that “[i]f the Judge or Jury finds that Bao does not disclose this</p> |