

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CLEVELAND MEDICAL DEVICES INC.,
an Ohio Corporation,

Plaintiff,

V.

RESMED INC., a Delaware Corporation,

Defendant.

C.A. No. 22-794-GBW-CJB

DEFENDANT RESMED INC.'S FINAL INVALIDITY CONTENTIONS

’269 patent. Regardless, calculation of AHI was a well-known feature of commercial PAP devices known to a POSITA, and disclosed in the prior art.

Dr. D’Ambrosio’s opinions as to the scope of the claimed “symptom data,” “severity,” and “index” terms is in conflict with the statements made by CleveMed during prosecution of the ’269 patent. CleveMed amended the claims on March 27, 2018 to add that “calculating symptom data” was “based in part on both the respiratory airflow data and pulse oximetry sensor data.” ’116 FH, 3/27/2018 Amendment at 2, 4. CleveMed argued that the Wright reference does not teach a “processor adapted for receiving sensor data from both the signal processing module and the airflow sensor and calculating symptom data based in part on both the respiratory airflow data and pulse oximetry sensor data of level of severity and/or an index of a level of severity of the subject’s sleep disorder symptoms,” but “Wright uses the data collected with its system to *calculate and analyze stroke indicators* **not to calculate a level of severity or an index of a level of severity of the subject’s sleep disorder breathing symptoms** as claimed.” ’116 FH, 3/27/2018 Remarks at 10 (italics and underline in original, bold added). CleveMed also argued in numerous places that the Wright reference does not disclose the claimed “calculating” features, but “rather calculates and stores stroke recovery information,” citing paragraphs 30-45 of Wright. ’116 FH, 3/27/2018 Remarks at 10-11, see also page 12 (emphasis added). But a review of Wright’s paragraphs 30-45 shows that Wright described monitoring “patient health characteristics including, for example, oral and/or nasal airflow, snore, ... oximetry, pulse rate, ... and flattening index via the diagnosis unit and sensors in the blower” (¶ 34), generating “several indices” including “[o]ne such index [] based upon a functional relationship between the number of central or obstructive apneas over a particular time period” (¶¶ 35-36), and identifying an apnea (¶ 37). The claims were then allowed by the examiner in response to these arguments (and amendments

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basis (HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY) pursuant to the Stipulated Protective Order entered in this matter. (See D.I. 46).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brian A. Biggs, do hereby certify that on this 20th day of November, 2023, the attached **DEFENDANTS' FINAL INVALIDITY CONTENTIONS** was served upon the following counsel of record via electronic mail:

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