

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.,
Petitioner,

v.

CLEVELAND MEDICAL DEVICES INC.,
Patent Owner.

Case IPR 2025-00159 (Patent 11,375,921 B1)
Case IPR2025-00160 (Patent 11,786,680 B1)

Record of Oral Hearing
Held: March 19th, 2026

Before SHERIDAN K. SNEDDEN, NEIL T. POWELL, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

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

9:02 a.m.

THE BAILIFF: All rise.

JUDGE SNEDDEN: Morning. Please be seated.

MR. HANNAH: Morning.

JUDGE SNEDDEN: This is a joint oral hearing for IPR2025-00159 and IPR2025-00160. I should say it's a consolidated hearing. Thank you. I'm Judge Snedden and with me on the panel are Judges Powell and Hardman.

We will begin with appearances today, starting with Petitioner. Please stand, introduce yourself, and who you have with you today.

MS. NGUYEN: Good morning, Your Honors. My name is Lisa Nguyen for Petitioner, ResMed Corp. With me is my colleague, Dr. Kamilah Alexander, who will also be presenting argument today with me. Also in the room is my colleague, David Tennant at Paul Hastings and (inaudible) at ResMed. Thank you.

JUDGE SNEDDEN: Thank you. Welcome.

MS. NGUYEN: Thank you.

JUDGE SNEDDEN: Patent Owner?

MR. HANNAH: Morning, Your Honor. James Hannah on behalf of CleveMed. And with me is Jeffrey Price who will be presenting the argument this morning, and I'll be presenting this afternoon.

JUDGE SNEDDEN: Okay. Welcome.

Per our oral -- per our order granting this oral hearing, each party will have 60 minutes of total time to present its arguments. Petitioner will open

1 the hearing with its presentation followed by Patent Owner, and each side
2 may reserve rebuttal time.

3 We, the judges, have electronic versions of your presentations today,
4 your slide decks. And I would take this opportunity to remind the parties to
5 speak to the slide number that you're presenting for the benefit of the record
6 and for Judge Hardman who is appearing remotely today.

7 So with that, you may begin when you're ready. If you'll let me know,
8 at your convenience, when you'll -- if you'll want to reserve any time today
9 for rebuttal?

10 MS. NGUYEN: Thank you, Your Honor. Yes, we'd like to reserve
11 20 minutes for rebuttal.

12 JUDGE SNEDDEN: You may begin when you're ready.

13 MS. NGUYEN: Thank you, Your Honors. Once again, my name is
14 Lisa Nguyen at Paul Hastings on behalf of Petitioner ResMed Corp. Let's go
15 ahead and go to slide 2.

16 So I'd like to begin by talking about the disputed limitations in this
17 case. And actually, there really aren't any disputed limitations to the extent
18 that we're talking about whether or not these limitations were -- are actually
19 disclosed in the prior art. Ultimately, the parties are discussing three
20 limitations: remote internet site found in the 921 and 680, retransmit found
21 in the 921, and independently received in the 921. And there is really no
22 dispute that prior art, in particular, Kumar, actually discloses remote internet
23 site. The question really is whether or not someone of ordinary skill in the
24 art would actually implement the proposed combination in the way we

1 discussed in our petition. And the facts in the record establish that they
2 would.

3 Today, I will be addressing remote internet site, and my colleague, Dr.
4 Alexander, will be addressing retransmit, independently received, as well as
5 motivation to combine with respect to patient's cell phone. But taking a step
6 back, once again, I'd like to reiterate, with respect to the issues in this case,
7 in particular, the 680 patent, there is no dispute with respect to whether or
8 not the limitations of the claims are actually disclosed. They are disclosed in
9 the prior art. The question is whether or not the person of ordinary skill in
10 the art would have implemented the proposed combination.

11 And to help with that, we'd like to go to slide 8 and really talk about
12 what was going on during this time period, during the 2000 -- early 2000s.

13 Let's go to slide 9. As the petition established, there were a number of
14 auto-adjusting CPAP machines at the time already, so we know that there's
15 no dispute with respect to whether or not the CPAP machine itself was
16 disclosed. And at the time, there were many CPAP machines disclosed at
17 the time.

18 Let's talk about networking and what was going on at the time with
19 respect to networking. At this time, there were developments in mobile
20 commuting that really spurred on this approach towards networking
21 consumer devices. And so everything at that time period in the early 2000s
22 was being connected because we saw the advantages of what would have
23 happened if we did network, things like having data collected and being able
24 to analyze that data and determine patterns and information that we could
25 establish from that data.

1 What else was being collected at that time? Specifically, PAP data,
2 CPAP machine data was also being collected at that time to be analyzed and
3 reviewed by physicians to determine how to best treat patients with sleep
4 apnea.

5 And what else did we have? We had the rise of mobile devices and,
6 in particular, internet-connected mobile devices. In the early 2000s, we had
7 cell phones from the Nokia, from Blackberry, from PalmPilot that allowed
8 consumers to actually look at the internet and look at data in the internet.

9 And so what does that all mean? Well, let's actually look at the prior
10 art, and let's go to slide 14. Slide 14 talks about Toge. And really, when we
11 talk about Toge, you have to remember that not only does Toge disclose a
12 CPAP machine, it actually discloses a networked CPAP machine. Really,
13 the only dispute between the parties is whether or not Toge disclosed the
14 remote internet site insofar as whether or not it disclosed a webpage. But
15 there was no dispute that Toge actually disclosed a networked CPAP
16 machine, and that Toge actually specifically and expressly disclosed in
17 Paragraph 9 that you could use the internet as the communication network
18 between the CPAP device, sending data to the actual physician computer or
19 the physician's mobile terminal, which could be, for example, a cell phone.

20 And Toge was in 2001. So in 2001 we already have Toge providing a
21 network PAP device that used the internet, that specifically and expressly
22 used the internet to communicate data from the PAP device to a computer, a
23 physician-side computer that is installed. And that's very important to
24 remember: that it's not just a computer. It's a computer installed in a
25 hospital, in a clinic, in a medical institution. That is expressly disclosed in

1 Toge. And then separately, Toge also disclosed that you could also send
2 data to the physician's mobile terminal, Mobile Terminal Number 5, which
3 again could be a cell phone, could be a PDA, could be a PHS, which in
4 Japan was a handy phone system.

5 So let's look now at Kumar on slide 15. Kumar similarly discloses
6 that you can network medical devices, just in general. And it's important to
7 note that Kumar, at Paragraph 74, actually says that their system -- for their
8 system, virtually any device may be easily incorporated into the system.
9 And this is 2002, very shortly after Toge. Kumar is telling people, the
10 public, that you can have telemedicine, you can have any medical device and
11 network it so that, not only can you access the data, but patients can actually
12 access it through webpages.

13 So there is no dispute that Kumar actually discloses a remote internet
14 site that patients can access and physicians can access through webpages and
15 that it used internet, and that it actually also disclosed one of the medical
16 devices it can use is to monitor sleep apnea. Kumar expressly said, hey, let's
17 monitor folks who have sleep hypopnea, sleep apnea, because that's
18 important to determine whether or not they are having the appropriate
19 treatment at home.

20 So let's actually go back to slide 5. What is purported invention? It's
21 simply that: a networked PAP system that transmits symptom and usage
22 data to a cell phone and remote internet site. And again, this is basically
23 Toge.

1 If we go to slide 6, this is the 921 patent. You have the CPAP device
2 that will be connected to the patient and then provide information to a
3 remote internet site through relay stations or base stations, as they call them.

4 And then if you go to slide 7, similarly, the 680 patent has a very
5 similar figure, very similar disclosures about CPAP machine that simply is
6 networked and provides information to a remote internet site.

7 So let's actually talk about remote internet site and what the claims
8 actually discuss. For the 921 patent, it says, "A remote internet site where
9 the remote internet site is adapted to receive the data, relay to the subject's
10 treatment and the treatments of efficacy, in whole or in part generated by the
11 PAP device." This is basically what Toge does. It provides PAP
12 information to the patient's -- from the patient to the physician's either
13 computer, again, or mobile device. And it says it can do that through the
14 internet.

15 The parties -- Toge itself does not specifically say, okay, let's use a
16 webpage, but it does say an internet. And keep that in mind, because if Toge
17 already says, let's use the internet to transfer this information over to the
18 physician's computer or handset, then why not go ahead and use the internet
19 in order to access that information also?

20 And let's look at the 680 patent. What does it say about remote
21 internet site? "A remote internet site -- the remote internet site, having
22 adapted to, one, be hosted on at least one server, and, two, used for remote
23 monitoring of multiple subjects receiving PAP therapy, the -- at least one
24 second software for the remote internet site and the database further adapted
25 to receive the PAP therapy efficacy data."

1 So what do the parties' arguments really boil down to with respect to
2 the remote internet site? It really boils down to two things. One, that Patent
3 Owner is saying that, no, no, somebody would not modify Toge or
4 implement Toge so that the physician-side computer would be a web server,
5 because that would defeat the purpose of Toge. And then two, Patent Owner
6 says that it -- no one would implement it that way because it would not be
7 secure. It would not be efficient. It would not be as effective a solution.

8 Again, we're talking about obviousness. Regardless of whether or not
9 the -- it is the best solution and, frankly, probably is the best solution, a
10 person -- it just needs to be an obvious solution. It needs to be one of finite,
11 limited options and that's exactly what a website internet site is, particularly
12 in relation to Toge's disclosure of internet.

13 And so taking a step back, does Toge alone disclose a remote internet
14 site? And if we go to slide 19 --

15 JUDGE HARDMAN: Counsel, it's Judge Hardman. Can I just jump
16 in here? I think Petitioner's specific argument is that the person of ordinary
17 skill in the art would've put the remote internet server on the physician
18 computer and then used a website or webpage to access the data that's, from
19 the server, that's on the computer.

20 Weren't there other ways to do it? For example, Kumar has a
21 centralized server and I didn't see all that much in particular about why the
22 person of skill would put the server particularly on the physician computer
23 as opposed to perhaps a central server that lives somewhere else, other than
24 to say that this was a common way to do it. So can you speak more to the
25 motivation of why that implementation in particular?

1 MS. NGUYEN: Sure. So if you actually look at Toge -- and actually,
2 let's go to Toge 34. I'm sorry, the slide 34. And I'm going to step back and
3 address one of the arguments that Patent Owner makes, which is they
4 frequently state or refer to the physician-side computer as a personal
5 computer, and it's not a personal computer. Let's be clear, because in Toge,
6 it says, "The physician-side computer is a computer installed at a medical
7 institution, hospital, clinic, medical office." And so a computer is a generic
8 term that actually can refer to multiple computers or servers because it's just
9 referring to the -- to machine or machines.

10 And you can see that, actually, if we go to slide 35, I believe. And in
11 Kumar, Kumar actually discloses this, right? Kumar discloses the same
12 exact thing in terms of having engines or central servers or computers at
13 hospitals, clinics, medical groups. We're really talking about the same thing.
14 Both Toge and Kumar, we're talking about a computer or a server that really
15 can serve as multiple computers or servers in the hospital.

16 And so when we're talking about, okay, well, doesn't Kumar disclose
17 using the central server? Why don't we just have a separate central server
18 and then have the physician access that? It's actually the same thing
19 because, ultimately, the physician-side computer is actually a computer
20 generally for the hospital or for the clinic or for the medical group. So we're
21 not really talking about a personal computer, like a laptop or something like
22 that. When Toge is referring to a computer, it really is referring to whatever
23 machines are located at the hospital, at the clinic, at the medical group.

24 And so when Kumar is referring to the central server and that being
25 accessed, that's actually essentially referring to the same thing. And you can

1 think of it as, for example, you have your physician-side computer and then
2 you might have a monitor or display input and output to allow a physician to
3 access that server, but it's basically the same thing.

4 JUDGE SNEDDEN: What about Petitioner -- I'm sorry, Patent
5 Owner's argument that the Toge system intentionally uses a push protocol
6 and so that change would change the functionality of Toge, that, for
7 example, essentially destroys that emergency functionality?

8 MS. NGUYEN: Right.

9 JUDGE SNEDDEN: Kumar is using a pull protocol.

10 MS. NGUYEN: Right. So two issues with that argument. One, Toge
11 never actually says, do I use a push protocol, pull protocol? Again,
12 remember that we're using the internet. So even if Patent Owner is correct
13 that somehow push protocols were not used at that time, then Toge would
14 not have used a push protocol either, because it's using internet protocol to
15 send data from -- to the PAP device, to the communication network, which
16 is either the internet or some other communication network that expressly
17 uses the internet, and it uses that protocol to send it to the physician-side
18 computer.

19 And so second issue is that that's actually not a push from the, like,
20 server. It's actually sending from the PAP device to the physician-side
21 computer, and nothing about that changes with the combination. And so no
22 matter what, the PAP device is still actually sending data to the four -- to
23 computer site -- physician-side Computer 4, and so nothing about that is
24 actually changing in the combination.

1 So -- and putting that aside, there were plenty of disclosures in Toge
2 that talk about using real-time or just regularly checking, which is
3 effectively a pulling or long-term query. And so if we go to slide 27, there is
4 nothing inherent about machines serving as both a client and server that
5 prevents it from pushing data as soon as it's received. So again, Toge --
6 nothing about Toge changes in the combination. Toge is sending data to
7 both the physician-side computer and the mobile device.

8 So let's say there is emergency. Regardless of whether or not there's a
9 server there, the physician-side computer is a server. That PAP device can
10 still send data in emergencies to that mobile device. Toge expressly does --
11 discloses that in the abstract. That can independently send to the computer,
12 to physician-side computer, and to the mobile terminal provider. So if
13 there's emergency, the physician is getting the data. It doesn't matter
14 whether or not it's push, pull, whatever. Nothing about the Toge system as
15 to that part of the system changes.

16 So the only thing is the web server, right? Physician-side web server,
17 which would be hosting the data and providing access to others. And again,
18 there's nothing inherent that would prevent that server to also send that data
19 as soon as possible, right? So particularly when you're using long polling, if
20 we go to slide 28, or a continuous query.

21 JUDGE SNEDDEN: One more question. We have two patents here,
22 the 9 -- the 5292 patent and the 1592. And when I read those claims, it
23 seems that -- you can let me know if this understanding is correct also, but
24 that the data can be pushed to the doctor or the care provider, but when we
25 looked at Claim 1 of the 680 patent, that one seems to have language that

1 says that the data must be presented to the patient. And that sets up a little
2 difference in the motivation where Toge is pretty much a physician-side type
3 of device. It seems to be more focused towards that, not necessarily a
4 system that presents data to the patient.

5 So how would one go from this physician-focused device to
6 something that is info to the patient? How would that change the Toge
7 system?

8 MS. NGUYEN: Right. So let's say that, setting aside everything I
9 just discussed with respect to motivation for you to collect data, that actually
10 also applies to the patient. And that -- that's actually in our motivation to
11 combine too, where we discuss motivation to combine in both Kirkness,
12 Paragraphs 135 to 144, and to -- in Chatterjee, Paragraph 76 through 87.
13 And the reason why was access, right? And both experts talk about access
14 to data, not just to the physician, but to the patients, too.

15 So setting aside the, is there an emergency? I think if there's an
16 emergency, the patient is not going to be able -- necessarily be looking up
17 their PAP data. But if you're just talking about can -- how -- now that -- let's
18 look at Toge, and I'm a person of ordinary skill in the art thinking about,
19 how can I improve Toge? Well, I'm already sending all this data to the
20 hospital's computer that's storing it, that's hosting it. Why can't I access it?
21 Why can't other people access it, right? If you're already saying, I'm going
22 to allow my physician to access it from a mobile terminal, I'm going to allow
23 other physicians who need to access the data from their home computer.
24 Why can't I also access the data so that I can see the data myself and have
25 ownership over my own data as well?

1 And so that goes into access for everyone also, right? At the time,
2 with respect to telemedicine, with a lot of patients being far away, that was
3 one of the ways and motivations to do telemedicine, right? A lot of patients
4 didn't have access to doctors. If you want to go over somebody's PAP
5 results with them, you want to give that patient access to the data also, so
6 you're looking at the data at the same time.

7 So it's all the same motivation about access to data that both Dr.
8 Kirkness and Dr. Chatterjee discussed in their declarations, as I mentioned,
9 in Paragraph 134 -- 544 for Dr. Kirkness and Paragraphs 76 to 87 for Dr.
10 Chatterjee. So this is part of the trend towards, let's collect all the data and
11 make it accessible for everyone.

12 So we talked about why it doesn't change Toge's purpose. Let's talk
13 about the argument that a person wouldn't be motivated to combine these
14 two references, because they would be on the same computer; that you
15 wouldn't put client and server on the same computer. The problem with that
16 argument is that it's implying something that's not there, that it has to be a
17 single computer. So if we go to slide 20 -- I'm sorry. If we go to slide 31, as
18 mentioned before, our expert says, hey, you can have the server and the
19 client on the same computer. It was known at the time. It was certainly
20 available as an option. And the problem with, as I mentioned, Patent
21 Owner's argument is that they're conflating an -- same computer with one
22 computer.

23 So if we go to slide 32, if you actually look at the rarely-used today
24 quote that they mentioned, it actually is talking about a single-tier client
25 server application. It's not talking about having the client server beyond the

1 same computer. A single tier client server application consists of a single
2 layer that supports the user interface, the business rules, and the data
3 integration process all in one computer. This kind of application is rarely
4 used today.

5 We're not talking about same computer, we're talking about single-tier
6 client server application, and that's actually not required by Toge. Again,
7 Toge is talking about a computer that -- when it says, a computer, it can
8 mean multiple computers serving and hosting data. And, in fact, if you
9 actually look at the claim language itself, it actually recognizes, also, be
10 hosted on at least one server. So we're talking about a server that can
11 actually be implemented as multiple servers.

12 Going back to Plaintiff's own evidence on slide 32. If you actually
13 look at -- I'm sorry, slide 33. The client process and server process can be
14 on the same computer, or distributed in two or more computers. So it's not
15 limited to a single computer implementation. And we actually --

16 JUDGE HARDMAN: Counsel -- oh, maybe you're about to say this.
17 But I'm wondering where in Petitioner's papers you made this point because
18 I don't remember that actually coming out in your arguments.

19 MS. NGUYEN: Yes. It was actually in a footnote. If you go to the
20 921 reply, footnote -- page 4, Footnote 1, we also say that Patent Owner
21 ignores that it can be on multiple computers. And with respect to the
22 petition, for example, in the 680 Petition, Page 13, it actually does also
23 discuss this very paragraph in Kumar, talking about how it -- when Kumar
24 refers to a single server, it can actually refer to multiple servers.

1 So another one of Patent Owner's arguments with respect to why you
2 would not have physician site computer --

3 JUDGE SNEDDEN: Before we move on, is that language "at least
4 one server," is that present in both the claims of both patents?

5 MS. NGUYEN: No. It's actually only in the -- I'm sorry, the 680
6 Patent. Let me confirm. 18. Yeah, 680 Patent.

7 JUDGE SNEDDEN: Okay. Thank you.

8 MS. NGUYEN: So if you go to slide 36, one of the arguments Patent
9 Owner also makes is that someone of ordinary skill in the art would not
10 actually implement the physician site computer as a web server because it
11 would not have been secure. But our expert, Dr. Chatterjee, emphasizes that
12 there's always trade-offs. And in some ways, putting a client server on the
13 same computer is actually more secure because you don't actually have to go
14 across networks, right? You're in the same machine, and so you don't have
15 to worry about data security vulnerabilities when you're accessing something
16 from a network; and so there's trade-offs.

17 But regardless, ultimately, if we go, for example, to slide 37, anytime
18 somebody is implementing a system, they're already thinking about security
19 concerns. And there's nothing inherent in Toge or Kumar that would
20 prevent the physician side computer to be a web server. For example, when
21 you're talking about database security, which is something that Patent Owner
22 referenced, and this is actually on slide 37, an exhibit from Patent Owner,
23 Patent Owner actually uses a reference that expressly talks about security
24 and how you can implement security in a database by doing database
25 partitioning.

1 So again, there's nothing inherent in Toge or Kumar that would
2 prevent you from implementing the physician side computer into a web
3 server. And specifically, Toge itself, you would need to access it somehow.
4 And so regardless, you're making a decision on, okay, I'm a physician, how
5 do I access the information that was sent to Toge's computer? They would
6 have to look at what the options are, and one of the options would be, let's
7 do it through some sort of webpage application or API.

8 So if we also go to slide 39, Patent Owner's last argument which we
9 have not talked about is performance. And Patent Owner says implementing
10 the web -- the physician side computer as a web server would actually slow
11 things down. And that's just not necessarily correct again, because again,
12 there's trade-offs. And so Dr. Chatterjee actually identifies multiple
13 instances where if you actually have the web server as some -- as a separate
14 machine, it would actually slow things down and be less effective. So you
15 are always working with trade-offs.

16 And if you go to slide 40, the law says, "A given course of action
17 often has simultaneous advantages and disadvantages, and this does not
18 necessarily obviate a motivation to combine." Again, these are just options
19 that somebody who is implementing Toge, trying to decide, okay, I have
20 Toge, how do implement it? I'm already sending data from the PAP
21 machine to the hospital computer. Now, how do I access that information?
22 And the simplest way would be through a webpage, through some sort of
23 web API. And even if it has disadvantages, it also has advantages. And this
24 does not obviate the motivation to combine.

1 So once again, with respect to remote internet site, none of Patent
2 Owner's arguments actually are consistent with the evidence. Does it change
3 the purpose of Toge? It does not, because again, Toge's PAP device is still
4 sending information to the web server, to the mobile terminal. Is it possible
5 to have the server and the client on the same device? Absolutely. It was a
6 well recognized option at that time. Would it be less secure? There's
7 advantages and disadvantages, and so that would not obviate a motivation to
8 follow.

9 So unless there's any other questions, I'll turn it over to my colleague,
10 Dr. Alexander, to talk about retransmitting.

11 DR. ALEXANDER: So the next disputed limitation is retransmit,
12 which is recited in independent Claims 1 and 7 of the 921 Patent. And the
13 dispute here is whether the term should have its plain and ordinary meaning
14 as Petitioner argues, or whether the term should exclude a particular type of
15 transmission, in particular, a request from the client as PO suggests in order
16 to evade the prior art. Regardless, Toge in view of Kumar, when combined,
17 still discloses data retransmission.

18 So let's quickly look at the claims on slide 49 just to look at the
19 language. And as you can see in Claim 1, PAP data is retransmitted from
20 the cell phone to the remote internet site. And in Claim 7, PAP data is
21 retransmitted from the remote internet site to the cell phone.

22 And returning back to slide 42 here is the dispute. Petitioner believes
23 retransmission has its plain and ordinary meaning. Patent Owner believes it
24 should be receiving data and then sending data to another device, but
25 excluding a transmission in response to a request from the client. And

1 Petitioner just wants to -- and I'm sorry, go -- moving on to the next slide, on
2 slide 43. This is the actual language that Patent Owner used to delineate its
3 exclusion here and its reply.

4 And Patent Owner just -- or Petitioner just wants to note that Patent
5 Owner is asking for a negative limitation here, which under Federal Circuit
6 case law says requires an explicit disclaimer. And this was in Omega
7 Engineering v. Raytek Corp. And silence is not enough under Geosolutions
8 v. Magseis.

9 So what does the specification say about retransmit? The 921
10 specification does not define retransmit. What you see here before you is all
11 the 921 Patent says about the term retransmit, that you receive physiological
12 data transmission, optionally reprocess that information, and then retransmit
13 that information to a remote site for analysis. That is not a definition. There
14 is no recognized lexicography signals of a definition. And there's further, no
15 explicit disclaimer in the specification regarding retransmit that would
16 support Patent Owner's negative limitation here. In all of the 50-page
17 specification, this is again, all we see about retransmit is the sentence that I
18 just read to you.

19 And Dr. Chatterjee has said, as I move to slide 46, that he doesn't
20 think that retransmit is limited to pushing data, which is Patent Owner's
21 stance. It simply means to a person skilled in the art that you're getting that
22 data, you're doing something with that data, and then you're sending that
23 data on.

24 So why is Patent Owner trying to advance this particular limitation?
25 Because as my colleague already discussed, then the panel has discussed,

1 Patent Owner believes that Toge only discloses pushing information, and so
2 that would not be a retransmission, and that that would be destroyed if -- or
3 I'm sorry, that would be a retransmission, and that would be destroyed when
4 Toge is combined with Kumar.

5 And number two, Patent Owner believes that the Toge-Kumar system
6 can only transmit data through client requests. And as my colleague has
7 already discussed, Patent Owner is wrong on both of those fronts. Toge,
8 now on slide 40 -- I'm sorry, on slide 47, Toge is not limited to push. It
9 doesn't say whether it pushes or pulls data. And we can see this as I go to
10 slide 26, where Toge says that it transmits data almost in real time or at
11 regular intervals. That is all Toge says about how it transmits data.

12 And returning back to slide 47, our expert, Dr. Chatterjee, also
13 rebutted the second point, which is that the Toge-Kumar system isn't limited
14 to just pulling information and can -- could be implemented to essentially
15 automatically push data that has been received.

16 So -- and you have already discussed the long polling and the
17 continuous query that Dr. Chatterjee suggested would be a push-like
18 implementation in a pull system, so I won't go over that again given the
19 time. So in summary here, back to slide 49, retransmit should be given its
20 plain and ordinary meaning that does not exclude data that has been
21 requested. And to the extent that Toge does push data, there's no reason it
22 couldn't still do so when implemented with Kumar's remote internet site.

23 So the next disputed limitation here, which is on slide 50, is,
24 independent -- independently received the data, and this is independent
25 claim 12 and the 921 patent. And on the next slide here on slide 50, you see

1 the claim language to the left where the cell phone and remote internet site
2 independently received data from the PAP machine.

3 And you see here to the right in Paragraph 81 that Kumar discloses
4 description that satisfies this claim element. It says that "the engine can
5 configure the devices to send data directly from one device to the other
6 without needing to go through the remote internet site." Patent Owner
7 argues that, because the physician's cell accesses PAP data through the
8 remote through webpages, that it can't receive data directly, which would
9 require specialized software.

10 But this ignores Kumar's disclosure here where the devices can be
11 configured. They can be configured to do exactly that. And this is because
12 Kumar's disclosures are expansive and the architecture is flexible to meet a
13 variety of different situations so that one could configure the physician's cell
14 phone to access data through webpages or one could configure the
15 physician's cell phone to access data through specialized software like an
16 app and both would be desirable.

17 And then the final point here is that Toge -- as my colleague has
18 already alluded to, Toge already discloses direct data transfer via a
19 relay/server to the physician's cell phone, and there's no reason Toge's PAP
20 would not still be able to do so when implemented with Kumar. And so the
21 final point that I'd like to discuss here on slide 52 is whether there's a
22 motivation to combine Toge and Kumar, and particularly to add Kumar's
23 patient-side cell phone to Toge's PAP system, and we see the claim language
24 here where the patient's cell phone receives and displays PAP data.

1 As my colleague already spoke about, Petitioner has demonstrated a
2 number of motivations to do this and Dr. Chatterjee here -- I'm sorry, I
3 haven't been saying the slide numbers, on slide 55, detailed that cell phones
4 were available at the time they would do so and that a person with skill in
5 the art would have implemented this cell phone.

6 And to the extent that cell phones weren't widely available at the time
7 that could do this, that doesn't mean that a person with skill in the art
8 wouldn't have wanted to do this, wouldn't have had the conception and the
9 idea and invention to do this. What was available and current at the time
10 does not limit invention, which is innovative and prospective.

11 And finally, I want to end with -- sorry, back to slide 40, that there are
12 advantages and disadvantages to all design choices, and that doesn't obviate
13 a motivation to combine. Thank you.

14 JUDGE SNEDDEN: Thank you.

15 Mr. Hannah? And would -- how much time would you like to save
16 for rebuttal?

17 MR. PRICE: I'll also save 20 minutes.

18 JUDGE SNEDDEN: When you're ready.

19 MR. PRICE: Thank you, Your Honors. And may it please the board.
20 This case really comes down to one major issue, Petitioner's obviousness
21 theory depends on concocting a system architecture that none of the prior art
22 teaches, suggests, or motivates. It's an architecture Petitioner invented
23 solely to read on the claims of the patent, which require certain types of
24 transmissions between certain types of computers, and the way that they get

1 to that is by doing something that no -- that's -- nothing that's -- the prior art
2 didn't teach and no POSITA would have done.

3 So on Page 3, just to go over the summary of our arguments, Toge, in
4 view of Kumar, does not render obvious the claimed remote internet site. It
5 would not have been obvious to implement a server on a client's computer,
6 like a physician's computer at a hospital. There's no teaching in the art to do
7 that. If you look at any of the motivations that Petitioner cites in service of
8 the combination that they are suggesting, none of it has to do with the actual
9 implementation that they are suggesting, which is that you would run a web
10 server on a client computer.

11 Now, I'm sure there will be questions, but I think, you know, one
12 thing I heard today during the opening remarks was, well, Toge's physician-
13 side computer could actually be a number of computers. But that argument
14 was not advanced in the petition. I -- honestly, it's the first time I'm hearing
15 it today. I don't know how it saves them because then the mappings of the
16 re-transmissions and the independent transmissions no longer work, so I did
17 want to just flag that right up front. Aside from the motivation to put a web
18 server on a client computer, Toge alone or combination of Kumar does not
19 teach the various software limitations of the 921 patent. These are about the
20 transmission -- the specific transmissions that are required, you know,
21 between the remote internet site, a cell phone, a tap device, and we'll get into
22 the details of all of those as we move through the presentation.

23 And with respect to the 680 patent, there's no disclosure in any of the
24 prior art references of using a patient's cell phone to receive this data, to
25 retransmit the data. It's a missing limitation and there's no motivation to

1 insert something that's not disclosed in the prior art other than the conclusory
2 testimony of Petitioner's experts which has also been rebutted.

3 JUDGE SNEDDEN: Before we move on, can we -- can you direct us
4 to the teaching in Toge that you're relying on to -- that suggests that it's
5 limited to this one-tier architecture and wouldn't be expanded to or what's
6 limiting its architecture --

7 MR. PRICE: Oh, sure. Again, I -- and I think this is a -- an important
8 point, Toge doesn't teach client server architecture at all, right. So what
9 we're talking about here is Petitioner's proposed combination or modification
10 of Toge, which is to run a web server on the physician-side computer. That's
11 not something that's taught in Toge, okay. The -- Toge teaches a -- let's see
12 if we can -- I'm not sure I have one readily available. But what Toge teaches
13 is a PAP device that's connected to a relay device. Now, the relay device is
14 for getting the data off of the PAP device, and it could be integrated, it could
15 be a separate device that sits next to your PAP device, but the relay device,
16 and this will be important later when we talk about retransmitting data -- but
17 the relay device takes data and stores it. It could be requested from the
18 physician-side or mobile device. But it also pushes data in the event of an
19 emergency.

20 So when there is a -- the patient's symptoms get too bad, the system
21 will push an emergency notification to the client devices, the physician-side
22 and/or the mobile device. So what's really important to understand about
23 our arguments is there is no motivation to put a web server on a client
24 device. That's our top line argument. Now, we have many, many arguments
25 in addition as to not only was there no teaching, not only was there

1 motivation to do this thing that they said you would do, here are all of the
2 other reasons why a POSITA never would have even considered doing those
3 things. And one of those things is you would give up this push, the ability to
4 push emergency data, because when you're operating in a web server
5 environment, you -- and this is part of their motivation is that you get rid of
6 this specialized software that could allow these direct communications and
7 instead you would use a web server to allow clients to pull that data down.

8 JUDGE HARDMAN: Counsel, can I ask?

9 MR. PRICE: Yes.

10 JUDGE HARDMAN: Even if this is a change from a push system to
11 a pull system, what about the continuous polling that could effectively make
12 a pull system akin to a push system because you're continually asking, is
13 there anything new? Is there anything new?

14 MR. PRICE: I -- one, I think it would depend on how the -- that
15 system would be implemented and, again, all we have for that is Petitioner's
16 experts saying, hey, here's, you know, what we need to do to make these
17 claims obvious. You know, so a continuous polling, you know, it's not clear
18 how often that would happen. You know, if it's every half an hour and the
19 patient had a -- an emergency 25 minutes ago, that's still a problem. So you
20 know, I don't think that the continuous polling scenario necessarily gets you
21 the same benefit that the push system gets where you can actually get that
22 emergency data sent directly to you. Does that answer your question?

23 I think the other thing, and we'll get to this later, is that even in the
24 continuous polling, it requires requests and so -- when we're talking about
25 retransmitting data. Again, that -- that's not going to be happening. You

1 know, it's still requiring the physician to make a request, to -- instead of
2 getting it pushed without a request. Does that answer your questions? Can I
3 --

4 The main argument Petitioner advances for why it would've been
5 obvious to run a web server on a client computer was that it was well
6 known. It was not well known to do this. In fact, the undisputed evidence
7 shows that when you run a web server on a client on the same machine, it's
8 not suitable for a web application, which is exactly the motivation that
9 Petitioner is citing to use it in the first place. So just, bar none, separating a
10 server and a client onto different machines, it's fundamental security
11 practice. You know, this argument just entirely ignores client server
12 architectures, which is the whole motivation for bringing in Kumar or for
13 running a web server on, you know -- that would allow the clients to get
14 these devices.

15 So you know, aside from the fact that you don't get the ability to push
16 data directly to the physicians in emergency situations, it just -- the web
17 server architecture does not work the way that they want it to work. And
18 this evidence is not disputed. There was no deposition of Patent Owner's
19 expert. There was no discussion of this evidence in the reply. But you
20 cannot run a web server on a client and expect it to work the same way, for
21 example, that it would work in Kumar's system where it's a centralized web
22 server.

23 And again, you know, we heard earlier that, okay, well, you know, the
24 combination is not actually that you would run the web server on the client
25 computer. Now we have this new theory that actually the physician-side

1 computer is a cluster of computers throughout the entire hospital. I still
2 don't know in that scenario, is one of them a server? Is one of them a client?
3 Are we still running them on the same device? You know, it -- it's a new
4 argument. It's not developed. We didn't have an opportunity to evaluate it
5 and respond to it. So we think that it should be ignored.

6 So here's the evidence on why --

7 JUDGE SNEDDEN: Can I just pause you real quick?

8 MR. PRICE: Yes. Yeah.

9 JUDGE SNEDDEN: I just don't understand the argument that Toge is
10 using different architecture, but what language in Toge precludes the use of
11 a web server? Is there something that I get -- I think the argument was that
12 Toge uses something more general and not necessarily directing the person
13 of ordinary skill in the art to one system -- type of architecture or the other.

14 MR. PRICE: So --

15 JUDGE SNEDDEN: What in Toge forces us to a conclusion that is
16 it's using the one or one-tier architecture?

17 MR. PRICE: Again, that -- that's not from Toge. That's the
18 combination, is a one-tier architecture. If you're running the server and the
19 client on the same device, that's a one-tier architecture. And we know that
20 because when we asked Dr. Chatterjee about it, he said, yes, what we would
21 do -- be doing here is we would run the web server on the same computer as
22 the client, and you would access that server using the local host command.
23 That is the one tier --

24 JUDGE SNEDDEN: Okay. Understand.

1 MR. PRICE: -- client architecture. So again, it's not from Toge. It's
2 from Petitioner's proposed modification of Toge that now we have to worry
3 about whether or not and why you would run a web server on a client device
4 when nothing in the record teaches that. And we have an abundance of
5 evidence saying exactly why you would not do that, un rebutted evidence.

6 JUDGE SNEDDEN: Okay.

7 MR. PRICE: Yeah.

8 JUDGE SNEDDEN: Thank you.

9 MR. PRICE: You're welcome.

10 So again, here, this is just the evidence about why a web server and a
11 client app -- a web server and a client on the same machine is not suitable
12 for mobile application, and that's exactly what Petitioner wants it for.

13 It also creates fundamental security problems. I'm on -- now on Page
14 8. This is not conclusory testimony. This is Dr. Goodrich saying there were
15 known security vulnerabilities when, you know, if you were trying to run --
16 there are security vulnerabilities that require a multiple-tier architecture for
17 client server architectures. So if you have co-location, even, you know -- I
18 think even, you know, probably extending to this new argument where you
19 would have multiple computers all doing, you know, different things
20 throughout a hospital, if you're co-locating the data with a client device, that
21 introduces vulnerable -- serious vulnerabilities. That would tell a POSITA,
22 do not do this in the first place.

23 And similarly, a POSITA would not have run a web server on the
24 client's computer for performance reasons, right? A web server is going to
25 get tons and tons of pings for requests. It's always, you know, serving

1 requests for data. If you're doing that on your mobile device, right, or your -
2 - you know, your computer, that's going to affect the performance of both
3 systems. So you know, not necessarily here a reason that you couldn't do it,
4 but a reason that a POSITA would not have even considered this option in
5 the first place.

6 Okay. On Page 10, we already talked about the pull versus push. If
7 there are no other questions there, I'll move on.

8 Okay. Are there any other questions about the motivation to combine
9 a web server with Toge's physician-side computer?

10 Okay. Then I will move on to the software limitations of the 921
11 patent. Here I am on Page 13. So during the opening presentation, Counsel
12 referred to the correct construction of the term "retransmit data." This is
13 what retransmitting data is: So there's a PAP device that transmits data the
14 first time to another device. That device acts as a relay and retransmits it to
15 another one. It doesn't mean that the relay device that's in the middle here in
16 Claim 1 is a cell phone or a PDA or a base station. It doesn't mean that it
17 has to pass on the information exactly as it's received. It doesn't mean that
18 there can't be any processing of the data that it receives. But at least some
19 data that's received from -- that's transmitted from the PAP device must be
20 retransmitted from the cell phone, PDA, or base station.

21 And our position is that the plain and ordinary meaning in the context
22 of the patent -- the plain and ordinary meaning of the term, in general, and in
23 the context of the patent is that the data is received and it's sent on. Now,
24 Counsel said that we were trying to import a negative limitation into the
25 claims and that's not true. We have -- it -- it's a positive limitation that you

1 must receive the data and send it on. That's what Dr. Chatterjee said when
2 he asked about it. He said it's a relay device that, you know, when we're
3 talking about retransmitting data, you receive it and you send it on.

4 Now, it's a different question about whether the prior art teaches that
5 or not. The prior art does not teach retransmitting data. The prior art in the
6 combination teaches sending, getting the information somehow to the web
7 server, right? Now, we're assuming that the web server is sitting on the
8 physician-side computer. You get the data there, but then it sits there until
9 there's a request. There's no retransmission.

10 So I want to draw your attention carefully to Page 13 because the
11 ultimate destination for the PAP data here is the remote internet site, right?
12 We want to -- we're using a cell phone here, a base station, a PDA, in order
13 to get the data from the PAP device to the remote internet site, right? That's
14 a very, very different scenario than storing data at an internet site and then
15 requesting it from a client device. So our position is that -- not that there's a
16 negative limitation that excludes requests, you know, sending data in
17 response to a request. It's just that it doesn't meet the actual construction,
18 which is receiving and sending off.

19 JUDGE HARDMAN: Let me see if I understand, Counsel. So you're
20 saying that retransmit the -- a device receives it and has to push it on, and it
21 needs to push it on unilaterally without having -- if it pushes it in response to
22 a request, that is outside of retransmit? Is that your position?

23 MR. PRICE: That is our position, yes, Your Honor. And the reason
24 is, if there's no request, the data never gets there, right? So you need an
25 additional -- you know, it never gets to the destination where you want it,

1 right? If we require the remote internet site to actually request the data from
2 the cell phone or PDA, the data might not ever get there if the request is
3 never sent, right?

4 So what the claims require is: Here's how we're getting the data to the
5 remote internet site. We have a PAP device in the middle, and it is basically
6 a relay device. In fact, that's what Dr. Chatterjee said, you know, the
7 retransmission is a relay of the data. It's how we're getting the data to the
8 remote internet site. It's transmitted once and it's retransmitted. It's not
9 transmitted once and then it sits there until and unless somebody requests the
10 data.

11 JUDGE HARDMAN: What about -- I think Petitioner made the
12 argument that a physician would have reviewed files on his or her cell phone
13 and then send it back to the remote internet site for storage.

14 MR. PRICE: Right. So I believe the theory here, and I'm sure they'll
15 correct me if I get it wrong, is that data would be sent from the PAP through
16 the relay to the internet site operating on the physician-side computer. The
17 mobile device would request that data, make some comments, but then
18 what's -- you know. And then I think the idea is then data would be sent
19 back to the remote internet site so that maybe it could save the comments. I
20 mean, for one, I don't know why you're resending any PAP data. So you
21 know, you can receive the data, the PAP data at the -- eventually, right at the
22 mobile device.

23 This idea of adding comments is not in the art at all, I'm going to put
24 that out there, but, assuming that you can add comments from the mobile
25 device, I don't see any reason why you're sending PAP data, right? And

1 that's the data that we're talking about retransmitting back to the -- back to
2 the remote internet site. I -- that doesn't make any sense to me, right?

3 JUDGE HARDMAN: Well, because one of the -- it's part of the
4 medical file. The physician adds his or her comments and sends the whole
5 thing back rather than just send the comments.

6 MR. PRICE: But I -- my -- I guess my question would -- look, what
7 is the whole thing, right? Again, I'm -- you know, I'm trying to be practical.
8 I'm sitting here. I -- you know, I'm a doctor looking on my cell phone. I see
9 that there's been a trend, upward trend in, you know, AHI for this patient.
10 And I want to say, okay, there's been an upward trend in AHI for the patient,
11 I -- I'm not sure what am I -- what is this whole thing that I'm sending back?
12 Well, why are we sending the PAP data back to the remote internet site that
13 already has it?

14 I can understand wanting to send the comments, right? The comments
15 are going to say, you know, I looked at this data for this patient, and you
16 know, for future reference, here's what happened. But I don't see any
17 motivation then to send all of the PAP data back to the remote internet site,
18 which already has it.

19 And again, I think, you know, it -- the -- this, sort of, contorted
20 scenario shows that that -- how, sort of, how contrived the combination, is
21 because what we have is very simple. You know, we have a PAP device,
22 we're transmitting data to some intermediary, and that's forwarding it on to
23 the remote internet site. And the remote internet site gives, you know,
24 everybody the ability to access the data, just like any other remote internet
25 site.

1 Now we're talking about, you know, later, after it's already at the place
2 where we want it. Now we're talking about, you know, sending it to
3 somebody else and then their comments and then, you know, some more
4 contrived explanations as to why you're going to actually send PAP data, but
5 I don't know why you're sending PAP data. I think there's -- it's an
6 allegation that they could, or -- but I -- there's no -- I don't see any
7 motivation as to why you would do that instead of just sending the
8 comments.

9 The other thing is, you know, in this scenario, you're not
10 retransmitting data received from the PAP device, you're receiving -- you're
11 -- you know, if it's retransmitting at all, it's retransmitting data received from
12 the remote internet site in Petitioner's combination here for Claim 1. Similar
13 story here on Page 15 for Claim 7. This, Claim 7 is about our -- it requires
14 the claim construction of retransmit because as, you know, as we understand
15 it, for Claim 7 their argument is, essentially, you would go from the PAP
16 device to the remote internet site, and then you could pull the data. You
17 could request the data. And our argument for Claim 7 is that requested data
18 is not retransmitted.

19 On the claim construction point, Petitioner says plain and ordinary
20 meaning of retransmit. It doesn't say what the plain and ordinary meaning
21 is. It doesn't advocate for any particular position. It doesn't, say, have any
22 analysis of the specification. It just says plain and ordinary meaning, which
23 to me means they think it doesn't have, really, any meaning. There -- there's
24 no objective construction here. And again, we think that our construction is
25 the plain and ordinary meaning, based on just literally the plain and ordinary

1 meaning of retransmit, how it's used in the specification, and Dr. Chatterjee's
2 own testimony about how he would've understood the term retransmit in the
3 context of the 921 PAP.

4 And that's here, "Petitioner's expert agree that when retransmitting a
5 device acts as an intermediary that receives and then relays the data onto
6 another device." And again, the Toge-Kumar combination would send data
7 to the client device, in response to the mobile device, in response to an
8 HTTP request, instead of a retransmission. Petitioner argues that nothing
9 precludes the system from automatically pushing data once it was received.
10 That's not true. At the time of the invention, and this is undisputed, general
11 web push solutions for web servers were not available. And this gets into --
12 there were some arguments during the opening about the specialized
13 software, and we'll get there here on Claim 12, Page 18.

14 One of the main motivations for introducing Kumar's, you know, web
15 server or a web server in general, according to Dr. Chatterjee and Kirkness,
16 is that it allows you to get rid of the specialized software on the cell phones
17 and PDAs. So this idea that, you know, in the combination, once you have
18 actually implemented a web server in the system architecture, that you
19 would continue to use this specialized software. We just don't think that that
20 follows from the evidence or the motivations for introducing the web server
21 in the first place. According to Petitioner, right, one of the benefits of using
22 the web server is that you get rid of the specialized software that enables this
23 kind of direct communication.

24 So you know, while Toge does teach independent transmission of data
25 to client devices, right, a physician-side computer or the mobile device, once

1 you've introduced a web server as the thing that manages communications,
2 you're no longer, you know, operating under the specialized software
3 architecture. Now you're working in the client server architecture where
4 you're requesting data. And again, that -- that's based on their own
5 motivations as to why you would've put the web server there in the first
6 place.

7 JUDGE HARDMAN: Counsel, so you're saying that to go -- to send
8 data from the PAP device directly to the cell phone, you would need
9 specialized software to implement that?

10 MR. PRICE: Yes. And I don't think that's in dispute. In the opening
11 remarks, for example, Counsel said that, oh, well, you could just, you know,
12 keep the specialized software on the mobile phone and everything would
13 still work.

14 So you know, again, I think that's just, you know, once you look at
15 what their actual combination is and why they're proposing it, the idea that
16 you would still maintain the specialized software doesn't make any sense.
17 And then here, on Page 19, we just have some of the briefing discussing this
18 issue. And so here we have, on the bottom right, we have Petitioner's
19 experts saying, "The physicians and providers need not download particular
20 software to access the data. Instead, the physicians and providers can access
21 the data through an internet browser."

22 So again, you know, the motivation for implementing the web server
23 here also, you know, means that you would not continue to use this
24 specialized software because now you have the new, latest, and greatest, in
25 terms of web server technology.

1 JUDGE HARDMAN: Counsel, I had understood Patent Owner's
2 arguments for Claims 1 and 12 on this retransmit software (inaudible). In
3 Petitioner's proposed implementation, you no longer have a link between the
4 PAP device directly through to the cell phone; is that what you're arguing?

5 MR. PRICE: That's correct, yeah. You would not have that direct
6 connection anymore because you're getting rid of the specialized software
7 that gives you that connection. Now, instead, you have a web server and
8 you can just go and get the data from the web servers. I -- that -- that's the
9 whole point of implementing the web server in the first place.

10 And here on Page 20, we just had Dr. Goodrich's testimony, which
11 again, went unchallenged and unrebutted, agreeing with Dr. Chatterjee here.
12 Okay. Any other questions on the 921 before we move on to the 680?

13 680 patent, again, the high-level argument about what -- the person of
14 ordinary skill in the art never would've implemented a web server on a
15 physician-side computer, as alleged in the petition and reply. That holds for
16 the 680 patent also. A POSITA also would not have been motivated to use a
17 patient's cell phone to -- in the context of Toge and Kumar.

18 The idea of using a patient's cell phone as a relay device is not
19 disclosed. I mean, it -- it's just not, right? So all we have here is experts
20 coming up with all of these great reasons, you know, looking back in
21 hindsight, as to why it would've been great for a patient's cell phone to, you
22 know, operate in this way. But again, that's hindsight. That's not based on
23 evidence that was known or obvious or beneficial before the date of the
24 invention. This is all evidence that says, you know, looking backwards, if
25 you did this, right, if you came up with CleveMed's invention, it would've

1 had all of these benefits. That's not motivation to make it in the first place,
2 that's a recognition of the benefits of CleveMed's invention.

3 If there are no other questions about the 680, I do want to touch
4 briefly on the RPI issue. This proceeding should be terminated because
5 ResMed Inc. is an RPI. ResMed Inc. was -- is the parent corporation.
6 ResMed Corp. is a wholly owned subsidiary. ResMed Inc. has been named
7 as an RPI in many other IPRs between the parties, including one on a patent
8 that was only asserted in the Ohio action.

9 Now, Petitioner took the position that it only identified ResMed Inc.
10 on patents related to the Delaware action because ResMed Inc. was a named
11 defendant in that case. They also named ResMed Inc. as an RPI in a petition
12 challenging the 284 patent, which was only asserted in the Ohio action.

13 ResMed Inc., they -- in the Delaware action, ResMed Inc. tried to get
14 out of the case, that attempt was denied. And in the latest Fractus case,
15 ResMed Inc. was dismissed from the litigation, but only after agreeing to
16 indemnify ResMed Corp. So for at least these reasons, ResMed Inc. should
17 have been named an RPI in this case and they have not been, and the petition
18 is now time-barred.

19 JUDGE HARDMAN: Counsel, can I ask you, on the Delaware case,
20 you mentioned that ResMed Inc. tried to have itself dismissed, but was
21 denied. I think that was on a preliminary record and Petitioner's briefs say
22 that they have a pending motion to dismiss; so are they trying again and
23 what's the --

24 MR. PRICE: They are --

25 JUDGE HARDMAN: -- status of it?

1 MR. PRICE: -- they are trying again, as far as I understand. Maybe
2 my co-Counsel could speak to that a little bit more cogently in session. I
3 don't know everything about the district court, but as far as their
4 representations go, and the IPR, they have tried to make that argument
5 again; to have ResMed Inc. dismissed from the case.

6 However, we -- I -- and I will tell you this right now, CleveMed will
7 not just agree to dismiss ResMed Inc. unless it agrees to indemnify ResMed
8 Corp., as it did in the Fractus case. So you know, the fact that it's an
9 indemnifying party, it's willing to backstop them financially, that makes
10 them a clear beneficiary to this proceeding and it should've been named as a
11 real party of interest. The other --

12 JUDGE HARDMAN: Well they -- let me say, they indemnified in
13 the Fractus case, but how does that fact of indemnification in a separate case
14 mean that they are a clear beneficiary of this particular case, where I don't
15 think they have indemnified?

16 MR. PRICE: Well, they have not indemnified, but they are also a --
17 they argue -- the -- here's the other thing that's -- that's gone unmentioned is -
18 - well, to answer your question first. The fact that ResMed Inc. is willing to
19 indemnify and back up ResMed Corp. for their infringement actions shows
20 the relationship between the parties, right? That -- that's evidence that they
21 are working together. ResMed Inc. is ultimately the financial backstop for
22 ResMed Corp. And, you know, CleveMed will not dismiss ResMed Inc.
23 from either case without a similar indemnification agreement. At least
24 voluntarily.

1 Because then the other fact that I think is critical here is ResMed Inc.
2 has been accused of infringing the patents in the Ohio case. They are not yet
3 a named defendant. It -- the case is stayed. They don't have an opportunity
4 to do that yet, but both parties were accused of infringement. Same Counsel
5 wrote the counterclaim answer on behalf of both parties, telling the Board
6 that -- telling the Court that neither party infringed, okay? So they are not, at
7 this time, a named defendant in an action, but they have been accused of
8 infringement.

9 JUDGE HARDMAN: Wait. I don't understand. So CleveMed
10 asserted counterclaims in that Ohio action, counterclaims of infringement,
11 but did so -- but didn't bring in ResMed Inc. at that time. How are you
12 saying that they are accused of infringement if you didn't add them as
13 counterclaim defendants?

14 MR. PRICE: In the complaint, it names both ResMed Corp. and
15 ResMed Inc. as parties that infringe the asserted patents. And --

16 JUDGE HARDMAN: And you mentioned it in the body of the
17 complaint, but didn't add them as a party?

18 MR. PRICE: I, again, I'm not involved at all in the litigation, so
19 maybe my counsel can answer that more clearly. All I know is what's been
20 presented in this case and -- which is that, not only did we name -- did
21 CleveMed name ResMed Inc. in the complaint as infringing these patents,
22 but ResMed also answered that counterclaim complaint on behalf of both
23 ResMed Inc. and ResMed Corp.

24 If there are no further questions, I'll save the rest of my time for
25 rebuttal.

1 JUDGE SNEDDEN: Not for me.

2 JUDGE POWELL: No.

3 JUDGE SNEDDEN: Okay. You'll have 22 minutes for a rebuttal.

4 MS. NGUYEN: Thank you, Your Honors. Again, Lisa Nguyen on
5 behalf of Petitioner, ResMed Corp. Let me address the RPI issue first.
6 ResMed Inc. is not a party in this case, it's not controlling this IPR, it is not
7 paying for this IPR. We have provided documentary evidence showing that.

8 Patent Owner keeps on saying, well, they had the opportunity, they
9 could indemnify. That, to me, actually says the opposite, that ResMed Inc.
10 is not controlling this IPR. The fact that in the Fractus case, Fractus required
11 Inc. to actually say that they would pay if ResMed Corp. did not pay as -- in
12 exchange for being dismissed. So again, that actually goes to separation,
13 because those same issues are not in the CleveMed case -- or I'm sorry, the
14 Ohio case.

15 And so if the -- let's say the case goes through trial and somehow
16 Corp. is found to infringe, then it would be Corp.'s responsible. Inc. would
17 not be responsible. And that is, effectively, what the Fractus stipulation was
18 concerned about, because, if they dismissed Inc., Inc. would have no
19 responsibility for Corp. at all. And so, in order to be dismissed, they had to
20 actually agree to something that they don't currently do.

21 And so the other issues that Patent Owner raises, with respect to the
22 RPI issue, I'll speak to the same. With respect to the dismissal of Inc. in the
23 Delaware case, yes, that was denied on a preliminary record, but there is a
24 summary judgment motion that's still pending to get rid of Inc., and that has
25 not been decided yet on a full record. And, as we mentioned with respect to

1 the motion to dismiss, it was based on a misunderstanding of what was said
2 in another complaint. With respect --

3 JUDGE HARDMAN: Counsel, on the Delaware case, the pending
4 motion for summary judgment, do you have the docket number for that?

5 MS. NGUYEN: I --

6 JUDGE HARDMAN: Because --

7 MS. NGUYEN: -- we can get that for you.

8 JUDGE HARDMAN: If you can --

9 MS. NGUYEN: Yeah.

10 JUDGE HARDMAN: -- yeah, if you can get that, I would appreciate
11 that. And did ResMed Corp., in Delaware, seek to substitute itself for
12 ResMed Inc. or --

13 MS. NGUYEN: It did. I believe it did, but unfortunately I am not
14 involved in that case and that actually goes to another issue that Patent
15 Owner raises in its briefing. Patent Owner (inaudible) mentions that -- you
16 know, their shared counsel, but for this IPR, we have only represented --
17 ever represented ResMed Corp. We have never represented ResMed Inc. in
18 relation to the CleveMed patent, so Paul Hastings itself has never
19 represented ResMed Inc.

20 And with respect to the one IPR that they mentioned where Inc. was
21 not a defendant, the 284 IPR, that was filed pretty much concurrently with
22 the one IPR in the two -- in the Delaware case. And so for that IPR, it says
23 in the RPI section that they're identifying Inc. without conceding that RPI --
24 that Inc. is RPI, because they were filed around the same time, because they
25 knew that this might be an issue, because they shared counsel, because it

1 was filed around the same time. We have always represented Corp., we
2 have not represented Inc., and, therefore, it just -- and Inc. is not a defendant
3 in this case.

4 Patent Owner says that they accused Inc. of infringement in their
5 counterclaims but, again, they did not -- if they truly believe that Inc. was an
6 RPI or responsible for the products, they would've actually named Inc. as a
7 counter-defendant -- counterclaim defendant, but they didn't. And Inc., still
8 to this day, has not been affirmatively identified as a named defendant in an
9 allegation with respect to these patents that are currently before the board.
10 And so, if anything, that also shows that Patent Owner itself knows Inc. is
11 not an RPI.

12 With respect to answering on behalf of both Inc. and ResMed Corp.,
13 ResMed Corp. specifically separated it. ResMed Corp. said, ResMed Corp.
14 and its parent corporation. It didn't say, we. It didn't say that we were the
15 same entity. It was completely separate. And that is because they actually
16 did have some allegations, without naming Inc., in the complaint, that
17 somehow Inc. infringes. And so ResMed Corp. never said, we are ResMed
18 Inc. There's no corporate blurring. They're separate entities. And so there's
19 --

20 And, ultimately, there's no evidence of control, there's no evidence of
21 funding with respect to these IPRs. And to the extent that there is any
22 evidence that we have -- that Corp. and Inc. has one shared officer and one
23 shared address, it's -- that would effectively say any parent is -- should be
24 named as an RPI and that's just not the law. You have to identify all parents

1 with respect to -- for RPI purposes. Are there any questions about any of the
2 other evidence?

3 So I will now address back -- go back to the merits with respect to
4 Toge and Kumar. So Patent Owner made a number of statements with
5 respect to, this is undisputed, they don't have any evidence of this. Frankly,
6 that is just attorney argument and incorrect.

7 When a person of ordinary skill in the art is looking at Toge and
8 trying to implement it, Toge does not disclose how a physician would
9 actually access the data. And so a person of ordinary skill in the art, trying
10 to figure out, how do I implement Toge? Would think, okay, how about a
11 web application to be able to access the data? That would be motivated, as
12 we have mentioned, as both our experts mentioned, because of the fact that
13 Toge already discloses in Paragraph 8 that the communication network is an
14 internet -- can be the internet. And so it would've been obvious, given that
15 Toge already says, hey, let's use the internet, to use a web application in
16 order to do that. Hence, the internet -- remote internet site.

17 Patent Owner also said that nobody has ever done this, nobody has
18 ever done a server that hosts data. That, to me, made no sense, because
19 Kumar itself, again, this is not disputed, Kumar discloses, remote internet
20 site. And Patent Owner also made the statement that we have not rebutted,
21 on slide 6 of their presentation, that it's not suitable for a web application,
22 but if you go to slide, again, slide 47, that talks about the Toge-Kumar
23 system and how you would have internet -- use internet in order to
24 implement it.

1 And with respect to -- if we go to slide 31, slide 31 talks about using a
2 server and a client on the same machine. Why would you have a separate
3 computer for that when you already have your information on the computer?
4 Let's access it using the same computer. That's the web application. That's
5 the client web application. That's why you type in, local host. This is from
6 the Microsoft Computer Dictionary. It was in the dictionary already, to be
7 able to access local hosts.

8 So it is 100 percent disputed that this -- that it's not appropriate for a
9 web application, because it absolutely was. People did it at the time, so
10 much that Microsoft included it in its computer dictionary that you can
11 access data served through TCP/IP, which is the internet protocol, and just
12 say, local host, hey, give me data. I'm a client layer on top of you, server,
13 give me data, local host. So that is absolutely rebutted. That's actually
14 supported by evidence versus just frankly, if anything is unsupported, the
15 fact that, one, Patent Owner did not ever point to where Toge does not say --
16 Toge says it has to be a push system.

17 Again, if you go to slide 47, what are -- what is the combination we're
18 talking about? Patent Owner mischaracterizes the combination. It -- it's not
19 that the mobile terminal would not receive PAP data anymore, it's just that
20 the physician-side computer is simply a web server. That was the only
21 change in the proposed combination. Everything else stays the same. And
22 given that everything else stays the same, how is it that some sort of weird
23 push-pull implementation, that is not even disclosed in Toge, would prevent
24 this combination? It doesn't make any sense, because the only change,
25 again, is that the physician-side computer would turn into a web server and

1 you can access -- a physician can access that by saying, hey, local host, give
2 me information.

3 I also want to clarify that one of the things -- and my colleague will
4 address it more, but Patent Owner also said that the mobile terminal would
5 not necessarily -- or not need to get data from the PAP device anymore. We
6 did not make that change. We did not remove any specialized software or
7 anything like that.

8 In particular, when you think about things that are accessible through
9 the web, you can have a web application or you can do it through a browser,
10 both are options. Just because you can make web browser an option, doesn't
11 mean that people will uninstall their web apps for some reason. People like
12 having web apps because it is specialized software that can help you
13 navigate more than an internet browser. That was not a proposed change
14 that we made to Toge. Toge -- again, the only change would be that the
15 physician-side computer would become a web server.

16 Now, with respect to Dr. Chatterjee, Patent Owner mentioned that Dr.
17 Chatterjee conceded that this is a single-tier architecture. He did not. If you
18 go to Exhibit 2033, Page 23, Lines 1 through 17, Dr. Chatterjee says, "This
19 is not what we're talking about." That we are not talking about a single-tier
20 architecture. He -- when counsel referred him to a single-tier architecture,
21 he said, "Well, it says that the application is limited to having the user
22 interface, the business rules, and the data manipulation processes all on one
23 computer, but that's not what we're talking about." Dr. Chatterjee never said
24 that this is a single-tier architecture. In fact, he said it was opposite. It is not
25 a single-tier architecture.

1 And with respect to Patent Owner's arguments --

2 JUDGE HARDMAN: Sorry, Counsel, can I just interject there? I
3 thought the single architecture meant that your web client and your server
4 are on the same machine and thus, that that means it's a single-tier
5 architecture?

6 MS. NGUYEN: It means that the layers are but, again, when you're
7 working in -- so one other thing that Patent Owner mentioned was that
8 nobody would implement one computer as distributed computing, basically.
9 That when you refer to one computer, it's talking about one computer. This
10 is multiple computers and, again, as mentioned on slide 35, that's where we
11 actually disclose in Kumar, in our petition, in our reply, that it can be
12 multiple computers.

13 And so when you're dealing with that implementation, you can
14 distribute it in different ways and it doesn't necessarily have to be a single-
15 tier architecture. So even --

16 JUDGE HARDMAN: Just the terminology, single-tier architecture, if
17 I have my web client and my web server on the same physician computer, is
18 that single-tier architecture?

19 MS. NGUYEN: No. So single-tier architecture just means the layers.
20 So if you go back to, I believe it is slide 32, it makes it clear it's the
21 application and not necessarily -- a single-tier architecture is referring to the
22 application layers and not whether or not you have one computer synced --
23 one computer or two computers, it's just the applications itself. So that it's
24 really a separate architecture that is not disclosed in Toge, not disclosed in
25 Kumar, and certainly not required by either of them.

1 And Patent Owner also, again, kind of, referring back to that
2 argument, says that we should ignore the argument that it could be multiple
3 computers. One, we did disclose it. It's, again, in 680 Petition and also
4 footnote 1 of the reply in the 921.

5 But regardless, it doesn't matter because it goes back to, if I am a
6 person of ordinary skill in the art, looking at Toge, I either alone would
7 know, hey, I can implement this as a web server, access the data using a web
8 API, or I can implement it the same way as Kumar and just use Kumar as a
9 reference and let's add that architecture. And Kumar itself establishes that
10 this is possible, that -- because Patent Owner is contesting there's no
11 evidence that anybody of ordinary skill in the art would've done this. Kumar
12 did this back in 2002. And so there is ample reason why a person of
13 ordinary skill in the art would have done this.

14 And, if we go to slide 23, also, you know, there's multiple disclosures
15 in Kumar, in Toge, and in other references like Langford, Exhibit 1043, on
16 wireless CPAP monitoring that talks about how you want to be able to
17 access data. And the easiest way to do that is through the internet and is
18 through doing a web application so that you have a remote internet site.

19 So once again, Patent Owner was asked, you know, for -- with respect
20 to Toge, what prevents you from actually implementing this? Patent Owner
21 actually was never able to point to anything specific in Toge to do that.
22 Whereas what we're pointing to, not hindsight, just, let's take a look at Toge,
23 how would I implement that? Toge says, use the internet. Okay, we're
24 using the internet. Access it using a web application. Either a person of

1 ordinary skill in the art would have known that, just by -- because that was
2 known already, or using the specific details specified in Kumar.

3 And I do want to give my colleague a chance to talk about the
4 retransmit and other arguments that Patent Owner made, unless there are any
5 questions?

6 DR. ALEXANDER: So just one quick point, actually. On retransmit,
7 Patent Owner said, if there is no request, then the data doesn't get there. If
8 there's no request, then the data doesn't get there. And that completely
9 ignores what both my colleague and I said about Dr. Chatterjee's discussion
10 of mechanisms by which a request could push data, could effectively push
11 data, in real time.

12 And that, specifically in long polling, where a request is sent from the
13 client to the remote server, the minute -- the second the data comes in, that
14 data is transmitted to the physician-side devices. As soon as that data comes
15 in, another request is sent and sits there at the remote server until more data
16 comes in, and that continues over and over again.

17 At that time -- because Patent Owner had said, there was no push
18 protocol at that time, so it's still a little perplexing how Toge is disclosing
19 push and Patent Owner, as my colleague has said, has been unable to
20 identify where in Toge it says it is exclusively transmitting data by push.
21 And Patent Owner has said those protocols did not exist at that time, so it's a
22 little perplexing how that is assumed, both in the 921 patent and in the Toge
23 patent. So Patent Owner is completely ignoring that you can effectively
24 push this data in an emergency situation, both with long polling and with
25 continuous query.

1 JUDGE SNEDDEN: Excuse me, Counsel.

2 DR. ALEXANDER: Yes.

3 JUDGE SNEDDEN: The way I understood that argument, though, is
4 -- I agree with everything you said, but I -- but the way I understand it is
5 that, effectively, the push or the pull -- or the pull can resemble a push,
6 because the outcome is the same. But it's still not within the definition of a -
7 - what -- excuse me. What a person of ordinary skill in the art would
8 consider the plain and ordinary meaning of the word, transmit. That,
9 transmit, is actually pushing you towards a -- forgive the -- the -- a pushing
10 towards the push type of protocol rather than implying a pull.

11 DR. ALEXANDER: Yes, Your Honor. And Patent Owner didn't
12 present any sort of evidence that this is what retransmit is limited to. And, in
13 fact, Dr. Chatterjee, in his testimony, said a person of ordinary skill in the art
14 would not have believed that retransmit is only limited to basically a push
15 and cannot involve a request. And if, again, if push protocols did not exist at
16 the time of invention, then how could you have retransmitted data if that is
17 the limitation, that it does not involve a request? Does that answer your
18 question?

19 JUDGE SNEDDEN: It does, yeah.

20 DR. ALEXANDER: Okay. All right, thank you.

21 JUDGE SNEDDEN: Did you have another point? I can give you one
22 more minute.

23 DR. ALEXANDER: I -- that was the primary point that I wanted to
24 make with -- in terms to retransmit. But thank you, Your Honor.

25 JUDGE SNEDDEN: Thank you.

1 MR. PRICE: All right. While this comes up, I'll go ahead and get
2 started. And I'll start with the RPI issue. The law doesn't require evidence
3 of actual control of a particular proceeding for a party to be a real party in
4 interest. It requires an opportunity to control and it requires that the other
5 party be a clear beneficiary of the proceeding.

6 And I don't think we can dispute either of those things. There --
7 there's no argument that ResMed Inc. could not have controlled ResMed
8 Corp. in this -- in this proceeding. The only evidence they have is that it
9 didn't actually, in fact, pay the bills in this proceeding and, in fact, the
10 attorneys from Paul Hastings -- client in this proceeding, is ResMed Corp.
11 That's great but it -- it's not -- it's not the law. The law is opportunity to
12 control and that you're a clear beneficiary. And I don't think either one of
13 those things can be really disputed in this case.

14 ResMed Inc. was named as the corporate beneficiary in the Corporate
15 Disclosure Statement. It said it had -- it may have, you know, in that
16 statement, may have a pecuniary interest in this proceeding. ResMed Corp.,
17 it could've said, in their statement, that it does not have that pecuniary
18 interest but it didn't make that point.

19 ResMed Inc. has a pecuniary interest in this proceeding, it could have
20 controlled this proceeding. It's -- in the past, has used the different corporate
21 entities for purposes of gamesmanship. In the 269 IPR between the parties,
22 for example, ResMed tried to insulate itself from definitive arguments by
23 arguing that ResMed Inc. was the party that was sued in the district court
24 and ResMed Corp. was.

1 So taken together, the evidence is clear to us that ResMed Inc. is --
2 has the opportunity, at least the opportunity, to control this -- ResMed Corp.
3 in this proceeding. It's a clear beneficiary. There have been instances of
4 gamesmanship in the past, no dispute -- no actual statement on the record
5 that ResMed Inc. is not a pecuniary beneficiary of this proceeding, and at
6 least all of -- and the fact that, in other cases, they have been willing to
7 indemnify ResMed Corp. for its liabilities. All is evidence that ResMed Inc.
8 should've been named an RPI in this proceeding.

9 The -- we heard a new explanation today as to why ResMed Inc. was
10 named as an RPI in the 284 case that was not in their papers. I can't -- we
11 didn't have an opportunity to address it. I don't know if it's true. Any
12 questions on RPI?

13 As Counsel said in rebuttal, the big -- the only real change they made
14 to the Toge system was to implement a web server on a client device. That
15 is the problem with their case. There is no motivation to do that. If you look
16 through the record for any type of teaching in the art that a person of
17 ordinary skill in the art would want to run a web server on the same device
18 as a client that's going to be receiving it, requesting that data, it doesn't exist.

19 So, you know, from a point of view of just the -- whether or not they
20 showed a motivation to do the one thing that they said they needed to do, the
21 answer is no, right? They did it because, you know, in order to make sure
22 that all of the other claim limitations were met by the combined system, they
23 had to. But the -- all of the motivations, you know, being able to access data
24 anywhere, all of the stuff that's created out of a remote internet site does not
25 motivate the actual combination that they're proposing.

1 Not only does it not motivate the actual combination that we're
2 proposing, there's umpteen, you know, evidence up and down as to why no
3 POSITA would've done this in the first place. The single-tier architecture, I
4 don't understand what they're saying there. It's when you're running a client
5 and server on the same machine, that's a single-tier architecture. Yeah, the
6 applications are different, right? You have a web server application, you
7 have a client application, but the one-tier architecture means they're on the
8 same machine.

9 So now, because that's not something that a person of ordinary skill in
10 the art would have done, right? When we asked Dr. Chatterjee about this
11 during cross examination, he said, oh, well, yeah, you know, when I was
12 writing software I used the localhost, you know, in order to test
13 configurations, essentially. So you know, if you're setting up a web server,
14 you know, the use case for a localhost is, I want to make sure that my -- I,
15 you know, I have a client device that I'm actually interacting with.

16 I want to make sure that my -- web server is up and running so that
17 when I actually put it online and it's available to all of the other people in the
18 world who are going to want to access it. Dealing with local hosts is my
19 way to test it while it's on my local computer. It doesn't mean that you're
20 going to have that architecture when the purpose is to serve data to other
21 computers, right?

22 And again, why are we looking at a web server from, you know, a
23 person of ordinary skill in the art or from Kumar in the first place? It's to
24 make that data available more broadly. That's the whole motivation. If you

1 put it -- single tier client architecture like they're proposing, you don't get
2 that, right?

3 So that brings up this new argument that we just heard today. That,
4 well, actually when we are -- when we're talking about modifying Toge, it's
5 actually a number of computers that are spread throughout the hospital. This
6 is the argument that they're pointing to that allegedly says that -- they argue
7 that Toge's -- that the implementation of the web server could actually be
8 split over multiple computers.

9 JUDGE SNEDDEN: Wait, what are we looking at?

10 MR. PRICE: Sorry. This is Page 4 of the 921 reply, the footnote that
11 Petitioner's counsel pointed Your Honors to.

12 This is the sum total of the argument that -- actually when we're
13 implementing a web server in Toge we can make the physician's computer
14 split over multiple computers. Now, that might -- I -- that might solve this
15 problem. First of all, it's not taught, right? And it's a completely new thing
16 on -- at the oral hearing today, but Petitioner then didn't go and map the rest
17 of the claims assuming that the server and clients of the quote physician site
18 computer are going to be multiple computers.

19 Now we don't know, okay, which of these multiple computers is doing
20 the transmitting and retransmitting, and none of that's mapped out in this
21 new theory. And it contradicts the petition. The petition says you're running
22 the -- you -- you're running the web server on the physician-side computer.

23 I heard in the rebuttal portion, an argument that Toge doesn't change
24 in the combination somehow, but of course it does. You know, and this is
25 really important because, I mean, again, this is the entire motivation for

1 making the combination in the first place is that instead of specialized
2 software -- that will be on the physician's computer or on the mobile device,
3 you are now going to use a web server architecture. And there are many
4 benefits to using a web server architecture. We don't deny the benefits of
5 using a web server architecture.

6 What we do deny is that Toge would still continue operating in the
7 same way once you've introduced the web server into the system, as it did
8 before. You know, when you're -- considering, one, what a person of
9 ordinary skill in the art would have done with the teachings, and then
10 whether it teaches the claims, you have to look at the combined system and
11 what a person of ordinary skill in the art would have taken from these
12 references.

13 And what we see here is the petitioner just taking what they need from
14 each reference to reconstitute the claims. These are not motivations that
15 come, you know, from the ground up that says, oh yes, a person of ordinary
16 skill in the art would want to implement a web server on a client computer
17 because it does this and this and this. No. There's motivation to use a
18 remote internet site somewhere in the system. I -- we don't doubt that. But
19 in order to meet the actual claim limitations, they had to put it where it
20 doesn't belong.

21 And so you know, when they say there's no change in Toge, there is,
22 of course, a change. Because our evidence about the push the push protocols
23 had to do with web servers and HTTP protocols. It's not to say that before
24 CleveMed's invention, there was no way to send information -- push
25 information from one device to another. That -- that's not the claim.

1 It's -- the claim is when you are using a web server, there was no --
2 there was no push ability at the time when using a web server. So what that
3 means is, if you don't have the specialized software that allows you to push
4 the information, because you're using a different architecture, you're using
5 the web server instead for communications to client devices, then that
6 eliminates your ability to push data to those client devices because it was not
7 an available feature in -- web servers at the time of the invention. That's not
8 disputed.

9 So the question is not whether or not specialized software could do it,
10 that's what -- that's our whole point. In Toge you had the specialized
11 software that allowed you to push emergency notifications to the client. You
12 give that up when you implement the web server.

13 And again on retransmit, I -- I'll just, you know, reiterate that it's not a
14 negative limitation, and it is the plain and ordinary meaning in the context of
15 the patent. You know, Counsel said, you know, it -- it's not used very much
16 in the patent. But where it is used, it's used in the context that we used it,
17 which is, you get something and you pass it on. There -- there's no
18 disclosure in the patents, for example, of using the term re-transmit to refer
19 to pulling data, right?

20 So if we're looking at just -- what does re-transmit mean to a person of
21 ordinary skill in the art, how is it used in the context of the patent? It's all
22 consistent. And the idea that retransmit could actually be, you know, the
23 data could sit on the server forever and, you know, get sent on request --
24 that's a transmission of data, it's not a re-transmission. Because the re-

1 transmission requires the -- both the receipt of the data and the transmission
2 of the data as one kind of cohesive technique.

3 Just wanted to show one other thing. On -- so this is Dr. Chatterjee's
4 testimony about the localhost issue. So here's where he's talking about
5 localhost. This is on Page 18 of his second transcript.

6 And so we say, "And that's the localhost server that's on the same
7 machine, correct, that's responding?"

8 "No. It's" --

9 And this, I think, was Petitioner's point. "Well, you know, the web
10 server is actually an application. It's a web server. Localhost is simply a
11 shorthand to refer to servers on that machine. So it's a web server on that
12 same machine that's responding to the HTTP request from the client
13 browser, that's a correct understanding on that same machine?"

14 "Yes."

15 So in case there were any questions about whether or not the localhost
16 embodiment -- it actually requires the server and client to be on the same
17 machine, that -- this is Dr. Chatterjee saying yes. And I don't have any other
18 -- anything further today, but my colleague will jump over.

19 MR. HANNAH: So Your Honor, I have some citations for you in
20 terms of, you were asking for citations for the underlying district court cases.
21 And so just to be clear, in terms of the cases, there's actually two cases that
22 are pending in Delaware for CleveMed v. ResMed Inc.

23 The first case is 1:22-CV-00794. The motion that you reference,
24 Judge Hardman, is at docket 236. That's going to be the public version. It is
25 redacted, but I think you will be able to see some of the arguments that

1 ResMed raises and then that we counter in our opposition. CleveMed's
2 opposition is at docket 254, and the reply is at 266.

3 Now, the second CleveMed case v. ResMed Inc. is docket 1:25-CV-
4 01351 and that was a case that was filed on November 5th, 2025. Again,
5 also against ResMed Inc. So if you have any --

6 JUDGE HARDMAN: Thank you.

7 MR. HANNAH: Yeah. And I'm sure that we can -- we can get you,
8 and work with the parties, to get you copies of the unredacted versions with
9 regard to this issue, if there's something in there. I looked through it briefly
10 during the break -- or during the arguments to see. I think most of the
11 information is there, but I'm sure we can work to get some of that
12 information to you if it's redacted and you need it.

13 JUDGE HARDMAN: If we need that, we'll reach out to the parties.
14 Thank you.

15 MR. HANNAH: All right. Thank you.

16 MR. PRICE: Okay. Thank you, Your Honors. We have no further
17 remarks today, so if you have any other questions for me, I'm happy to
18 answer.

19 JUDGE SNEDDEN: Thank you.

20 MR. PRICE: Thank you.

21 JUDGE SNEDDEN: So that concludes our morning hearing. And
22 thank you for your presentations today. We'll see you back here at 1:00 p.m.
23 We are adjourned.

24 (Whereupon, the above-entitled matter went off the record at 11:00
25 a.m.)

Case IPR2025-00159 (Patent 11,375,921 B1)

Case IPR2025-00160 (Patent 11,786,680 B1)

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