IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CLEVELAND MEDICAL DEVICES INC., an Ohio Corporation, Plaintiff, v. RESMED INC., a Delaware Corporation, Defendant.	))))))))))))	C.A. No. 22-794-GBW-CJB

DEFENDANT RESMED INC.'S THIRD AMENDED
<u>INITIAL INVALIDITY CONTENTIONS</u>

"adapted for measuring the respiratory airflow data of a subject using the PAP device." Instead, the '269 patent suggests that to "accurately measure air flow provided to the patient" a "sensor *in the air hose* 416 is used to measure the differential pressure," and does not disclose how an airflow sensor within the enclosure of the PAP device could be configured to measure the respiratory airflow of the patient. '269 patent, 23:36-39. If CleveMed alleges the disclosure in the '269 patent at Figure 7, and column 22:7-17 provides written description support for this limitation, this material was copied from a competitor's patent at a section describing the prior art, and is therefore not a feature of the alleged invention but instead a feature of conventional PAP systems known in the art. *See* US 6,644,311 ("Truitt").

B. Indefiniteness Under 35 U.S.C. § 112 ¶ 2 and/or ¶ 6

Under 35 U.S.C. § 112, a "patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014). "The primary purpose of the definiteness requirement is to ensure that the claims are written in such a way that they give notice to the public of the extent of the legal protection afforded by the patent, so that interested members of the public, *e.g.*, competitors of the patent owner, can determine whether or not they infringe." *All Dental Prodx, LLC v. Advantage Dental Prods., Inc.*, 309 F.3d 774, 779-80 (Fed. Cir. 2002) (citing *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 28-29 (1997)). Put another way, "[a] patent holder should know what he owns, and the public should know what he does not." *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 731 (2002).

ResMed contends that, at least under CleveMed's actual and/or apparent application of the claims, the Asserted Claims of the Asserted Patents fail to inform a person of ordinary skill in the art about the scope of the invention with reasonable certainty.

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

Dated: November 10, 2023

Respectfully submitted,

/s/ Brian A. Biggs

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CERTIFICATE OF SERVICE

I, Brian A. Biggs, do hereby certify that on this 10th day of November, 2023, the attached **DEFENDANTS' THIRD AMENDED INVALIDITY CONTENTIONS** was served upon the following counsel of record via electronic mail:

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