UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.
Petitioner

v.

CLEVELAND MEDICAL DEVICES, INC.
Patent Owner

CASE PGR: Unassigned
U.S. Patent No. 11,602,284
Issue Date: March 14, 2023
Title: Devices and Methods for Sleep Disorder Diagnosis and Treatment

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PETITION FOR POST-GRANT REVIEW OF U.S. PATENT NO. 11,602,284 UNDER 35 U.S.C. §§ 321-329 AND 37 C.F.R. §§ 42.200 *ET SEQ*.

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"an index of treatment efficacy" as recited by Claim 1 and was introduced well after March 16, 2013. EX1003, ¶¶57-59, 62-75.

The '899 and '116 applications, filed before March 16, 2013, do not provide support for at least Claim 1 of the '284 patent. No other application in the priority chain of the '284 patent was filed prior to March 16, 2013. Accordingly, at least independent Claim 1 "lacks written description and enabling support in a priority application filed before March 16, 2013." *Tricam*, 15; EX1003, ¶¶57-59, 62-75; EX1020, ¶¶42-56. The '284 patent is subject to the first-inventor-to-file provisions of the AIA and eligible for PGR.

II. COMPLIANCE WITH FORMAL REQUIREMENTS

A. Mandatory Notices Under 37 C.F.R. §§ 42.8(b)(1)-(4)

1. Real Party-In-Interest (37 C.F.R. § 42.8(b)(1))

ResMed Corp. ("Petitioner") identifies ResMed Inc. as a real party in interest without conceding that it is, in fact, a real party in interest.

2. Related Matters (37 C.F.R. § 42.8(b)(2))

The '284 patent is asserted in the following lawsuit that may affect or be affected by a decision in this proceeding: *ResMed Corp., v. Cleveland Medical Devices, Inc.*, case no. 23-cv-02221 in the U.S. District Court for the Northern District of Ohio.

after the alleged November 4, 2005 priority date. The Office also erred in overlooking Berthon-Jones, and, for example, its disclosure of the claimed airflow sensor as discussed in Section VII.C.

Finally, the Office did not have the benefit of the accompanying expert declarations (EX1003; EX1020) and should institute for at least the above reasons.

IX. CONCLUSION

Petitioner requests that post-grant review be instituted because it is more likely than not that claims 1-20 of the ’284 Patent are unpatentable under one or more of 35 U.S.C. §§ 103, 112.

Respectfully submitted,

Dated: December 13, 2023

/Gianni Minutoli/
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CERTIFICATE OF SERVICE
UNDER 37 C.F.R. § 42.105

The undersigned certifies service pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b) on the Patent Owner by **UPS Overnight** of this Petition for Post-Grant Review and supporting material at the following correspondence address of record for the ’284 patent:

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