

Filed on behalf of: Resmed Corp.

Filed: April 8, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED CORP.
Petitioner,

v.

FRACTUS, S.A.
Patent Owner.

Case No. IPR2026-00191
U.S. Patent No. 11,031,677

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

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1007	Declaration of Daniel van der Weide, Ph.D.
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1009	P. Ciais, R. Staraj, G. Kossiavas, and C. Luxey. "Design of an Internal Quad-Band Antenna for Mobile Phones," <i>IEEE Microwave and Wireless Components Letters</i> , vol. 14, no. 4, pp. 148-150, April 2004 ("Ciais-Quadband").
1010	P. Ciais, R. Staraj, G. Kossiavas, and C. Luxey. "Compact Internal Multiband Antenna for Mobile Phone and WLAN Standards," <i>Electronics Letters</i> , vol. 40, no. 15, pp. 920-921, July 2004 ("Ciais-Multiband")
1011	X. Jing, Z. Du, and K. Gong. "Compact Planar Monopole Antenna for Multi-band Mobile Phones," in <i>2005 Asia-Pacific Microwave Conference Proceedings</i> , vol. 4, pp. 2657-2660, IEEE, 2005 ("Jing").
1012	H. Nakano, Y. Sato, H. Mimaki and J. Yamauchi. "An Inverted FL Antenna for Dual-Frequency Operation," <i>IEEE Transactions on Antennas and Propagation</i> , vol. 53, no. 8, pp. 2417-2421, Aug. 2005 ("Nakano")
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1040	U.S. Patent Publication No. 2008/0018543 (Baliarda-543)
1041	U.S. Department of State, <i>United States Delegation Report: World Radiotelecommunications Conference 2007</i> (2007), available at https://2001-2009.state.gov/documents/organization/108955.pdf (visited May 19, 2025)
1042	IEEE Std. 802.11a-1999, Supplement to the IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements— Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) specifications: High-speed Physical Layer in the 5 GHz Band (Dec. 30, 1999)

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1046	ITU, Report ITU-R M.2134-0: Requirements related to technical performance for IMT-Advanced radio interface(s) (2008), <i>available at</i> https://www.itu.int/pub/R-REP-M.2134-2008/en (visited May 22, 2025)

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1047	Chart 45 to EX1016 [Confidential] ¹
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1049	Declaration of Dwayne Wheatley (“Wheatley Decl.”)
1050	Resmed FY2025 Form 10-K
1051	Resmed Press Release, Resmed Expands U.S. Operations with New Distribution Center in Greenwood, Indiana (Feb. 24, 2026)
1052	Joint Motion to Dismiss with Prejudice, <i>Fractus, S.A. v. Verizon Connect Inc. et al.</i> , No. 2:24-cv-01009, Dkt. 107 (E.D. Tex. Mar. 24, 2026)
1053	Order Granting Motion to Dismiss With Prejudice, <i>Fractus, S.A. v. Verizon Connect Inc. et al.</i> , No. 2:24-cv-01009, Dkt. 115 (E.D. Tex. Apr. 6, 2026)
1054	U.S. District Courts – Median Time Intervals to Disposition, available at https://www.uscourts.gov/data-news/data-tables/2025/12/31/statistical-tables-federal-judiciary/c-5 (last accessed April 7, 2026)

¹ EX1047 and EX1048 were filed under seal in *Geotab Inc. v. Fractus, S.A.*, IPR2025-01026, so Petitioner does not have a copy of these documents to file with the present petition. However, Geotab, Patent Owner Fractus, and the Board each have a copy of these documents, which were supplied with the petition in *Geotab Inc. v. Fractus, S.A.*, IPR2025-01026.

I. INSTITUTION ADVANCES THE OFFICE'S CURRENT POLICIES

The March 11, 2026 Memorandum and the current record compel denial of Patent Owner's ("PO's") request for discretionary denial.

First, investment in U.S. manufacturing favors Resmed. The March 11 Memorandum directs the Office to consider whether the accused products in the parallel litigation are tied to U.S. manufacturing or investment and whether PO has competing products manufactured in the U.S. In the parallel litigation, PO alleges infringement by Resmed sleep and respiratory care devices—AirSense, AirCurve, and Connectivity Module products—that are rooted in Resmed's U.S. footprint, including a major new distribution center in Indiana. *See* EX1050, at 9, 10, 13; EX1051, at 2–4. Notably, Resmed is also in the initial phases of a [REDACTED]

[REDACTED]

[REDACTED] Wheatley Decl., ¶ 2. Conversely, PO (a foreign company based in Spain) does not make, sell, or license a U.S.-manufactured product that competes with Resmed's accused sleep and respiratory care devices.

Second, there are no settled expectations. The '677 Patent issued in June 2021—less than six years ago. Importantly, the '677 Patent has not been commercialized, asserted, marked, licensed, or otherwise applied in the medical device space, let alone to sleep and respiratory care technology. PO only previously targeted cellular carriers, security device manufacturers, and location-based service

providers, and Resmed had no reason to anticipate the assertion of the '677 Patent against it. *See Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Paper 11, at 2–3 (Sept. 4, 2025) (informative).

Third, discretionary denial is not appropriate under *Elong Int'l USA Inc. v. Feit Elec. Co., Inc.*, IPR2025-00258, Paper 16, at 2 (June 25, 2025) (precedential), because the final written decision would issue before any trial in the parallel litigation regardless of joinder. Currently, there is no trial date (or even schedule) set in the parallel litigation. But even based on time-to-trial statistics, trial would not occur until January 2029, well after the projected final written decision date of July 2027 without joinder and December 2026 with joinder.

Fourth, the Board is the most efficient forum to decide the validity of the '677 Patent. This Petition is a copycat of a petition filed by another party, Geotab Inc. (“Geotab”) that is already instituted. Thus, the Board will already expend resources deciding these exact same grounds, regardless of whether the instant Petition is instituted. Indeed, institution will further the Office's policy to ensure consistency by centralizing the validity determination of the '677 Patent with the Board, instead of allowing that determination to be spread across multiple forums.

In contrast, PO's arguments for discretionary denial lack merit. PO first attempts to impute to Resmed the Texas schedule of Celco Partnership d/b/a Verizon Wireless (“Verizon”) and Geotab on the same patent. But those litigations

are irrelevant. Verizon has since settled, and Geotab agreed to a *Sotera* stipulation, so there is no overlap on the invalidity grounds at issue between the instant Petition and the Texas litigations. And even if that were not true, the Director has already found that the Texas trial date “neither favor[s] nor counsel[s] against discretionary denial.” *Geotab Inc. et al. v. Fractus, S.A.*, IPR2025-01026, Paper 14, at 2 (Oct. 17, 2025).

PO next argues that the “patentability challenges are decidedly weak.” DDR, 2. This argument fails on its face. The Board already determined that the original petition established a reasonable likelihood of success. *Geotab*, IPR2025-01026, Paper 20 at 59–61, 73–74. And the Director rejected PO’s request for review of the institution decision based on PO’s argument that the Board applied an incorrect legal analysis and erroneous factual conclusion—the same arguments PO makes here.

PO last argues that the parallel litigation involves other asserted patents. But there is no efficiency to be gained by litigating the validity of the asserted patents together. None of the other asserted patents are related to the ’677 Patent, nor do they share any similar limitations. Critically, the Board will already decide the validity of the ’677 Patent well before the validity of the other asserted patents would be decided in district court.

Accordingly, discretionary denial is unwarranted.

II. PROCEDURAL AND LITIGATION BACKGROUND

A. The *Geotab* and *Verizon* Litigations

On December 6, 2024, Fractus filed two actions in the Eastern District of Texas: *Fractus, S.A. v. Geotab Inc.*, No. 2:24-cv-01008 (E.D. Tex.) and *Fractus, S.A. v. Verizon Connect Inc. et al.*, No. 2:24-cv-01009 (E.D. Tex.). Fractus asserted the '677 Patent in both cases. On February 18, 2025, the district court consolidated the two actions for pretrial issues, and on March 18, 2025, issued a schedule setting jury selection for September 14, 2026.

On June 6, 2025, Geotab filed an IPR petition challenging the '677 Patent ("’1026 Proceeding"). *Geotab Inc. v. Fractus, S.A.*, IPR2025-01026, Paper 4 (June 6, 2025). As part of the petition, Geotab entered a *Sotera* stipulation, confirming that Geotab "will not pursue in the Texas Litigation, any ground raised or that reasonably could have been raised in IPR." *Id.* at 100. On December 3, 2025, the Board instituted review. *Geotab*, IPR2025-01026, Paper 20, at 2–3, 73–74. On January 2, 2026, Resmed filed the instant Petition and a motion to join the '1026 Proceeding. On January 5, 2026, Verizon also filed a copycat petition and a motion to join the '1026 Proceeding. *Cellco Partnership d/b/a Verizon Wireless v. Fractus, S.A.*, IPR2026-00196, Papers 1 and 3.

PO and Verizon have recently settled. On March 23, 2026, PO and Verizon filed a motion to terminate IPR2026-00196 based on settlement. *Cellco*, IPR2026-

00196, Paper 9. On March 24, 2026, PO and Verizon filed a joint motion to dismiss with prejudice their Texas litigation, stating that the parties “have settled their respective claims for relief and defenses asserted in this litigation.” EX1052, at 1. On April 6, 2026, the district court dismissed with prejudice the action against Verizon. EX1053, at 1.

B. The *Geotab* Petition

The original petition filed by Geotab on June 6, 2025 in the '1026 Proceeding challenges claims 1–20 of the '677 Patent. Paper 3 (Joinder Mot.), at 2–3; *Geotab*, IPR2025-01026, Paper 20, at 2. On October 17, 2025, the Deputy Director denied PO's request for discretionary denial and referred the *Geotab* petition to the Board. *Geotab*, IPR2025-01026, Paper 14, at 2–3. In denying the request for discretionary denial, the Deputy Director explained that “it is unclear whether a final written decision ... will issue after the district court trial occurs” and therefore “neither favor[s] nor counsel[s] against discretionary denial.” *Id.* at 2. The Deputy Director further explained that because the challenged patent had issued in 2021, PO had “not developed strong settled expectations that favor discretionary denial.” *Id.* On December 3, 2025, the Board instituted review. *Geotab*, IPR2025-01026, Paper 20, at 2–3, 73–74.

On December 17, 2025, PO filed a Request for Director Review. Like here, PO argued that the Board applied “an incorrect written description analysis” and

reached “an erroneous conclusion.” *Geotab*, IPR2025-01026, Paper 20, at 1. PO also argued that the Board misunderstood the recited “4G communication standard” limitation in the claims. *Id.* at 1–2. On March 3, 2026, the Director denied PO’s Request for Director Review. *Geotab*, IPR2025-01026, Paper 30, at 1–2. The ’1026 Proceeding is currently pending with the final written decision to be issued by December 3, 2026.

The instant Petition is substantively identical to the *Geotab* petition and expert declaration—the instant Petition contains identical arguments on the same grounds, based on the same prior art combinations and supporting evidence, against the same claims. Paper 3 (Joinder Mot.), at 1, 3, 5–7. If joinder is granted, Resmed has further agreed to an understudy role intended to streamline briefing and discovery and minimize any burden on the existing schedule. *Id.* at 1, 7–9.

C. The Parallel Litigation in S.D. Cal.

PO filed suit against Resmed in the Southern District of California on October 9, 2025, asserting the ’677 Patent along with four others. EX2033, ¶¶ 8–12; *Fractus, S.A. v. Resmed Inc. et al.*, No. 3:25-cv-02680, Dkt. 1 (S.D. Cal. Oct. 9, 2025). The complaint identifies the accused Resmed products as the AirSense 10, AirCurve 10, AirSense 11, AirCurve 11, and Connectivity Module products. *Id.* ¶ 16. On January 5, 2026, Resmed filed a motion to dismiss for failure to state a claim. The motion is still pending. No schedule has issued and no trial date has been set.

III. PO IGNORES CONSIDERATIONS FAVORING INSTITUTION**A. The March 11 Memorandum Confirms Institution is Appropriate**

Institution would protect Resmed's domestic operations and investment in U.S. manufacturing. Recognizing that "the availability of IPRs and PGRs is important to protect American manufacturers," on March 11, 2026, Director Squires issued a memorandum setting forth additional considerations related to U.S. manufacturing in determining whether to institute post-grant proceedings. In particular, the Director stated he would consider "the extent to which any products accused of infringement in a parallel proceeding are manufactured in the United States or are related to investments in American manufacturing operations" and "the extent to which any products made, sold, or licensed by the patent owner that compete with the accused products are manufactured in the United States." March 11 Memorandum at 2. Both of these considerations heavily favor institution.

Resmed maintains extensive domestic operations and is in the initial stages of a [REDACTED]

[REDACTED] Wheatley Decl., ¶¶2–5.

Notably, Resmed is nearing the completion [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

This is in addition to other significant investments Resmed has made in its U.S. operations, including opening a distribution center and logistics hub in Greenwood, Indiana last year, which supports Resmed's U.S. footprint and healthcare supply resilience. EX1051.

In contrast, PO is a company based in Barcelona, Spain specializing in advanced antenna technologies. *See* EX2033, ¶¶ 1–2, 13–15. Although PO claims to have designed and licensed its antenna technology to multiple companies, notably absent from its list of licensees is any company in the medical device space. *See generally id.* Indeed, there is no evidence that “products made, sold, or licensed by the patent owner [] compete with the accused products,” let alone such products that are manufactured in the U.S. March 11 Memorandum at 2.

To protect Resmed's U.S. operations and its continued investment in domestic manufacturing of sleep and respiratory care devices, institution is appropriate.

B. There Are No Settled Expectations

PO had no settled expectations. As a threshold, the '677 Patent issued less than six years ago in 2021. “Accordingly, Patent Owner had not developed strong settled expectations that favor discretionary denial.” *Geotab*, IPR2025-01026, Paper 14, at 2 (Oct. 17, 2025).

Even setting age aside, Resmed could not anticipate that PO would assert the

'677 Patent against it. Fractus has been litigating its patents for more than a decade. Notably, Fractus has asserted its patents against antenna manufacturers (Amphenol), handset manufacturers (Samsung, LG, ZTE, TCL), cellular carriers (AT&T, T-Mobile, Sprint, Verizon), wireless infrastructure providers (American Tower) and more recently, smart security systems (Vivint, ADT) and location-based services (Geotab). As a manufacturer of sleep and respiratory care devices, Resmed did not have any reason to expect that PO would assert the '677 Patent in the medical device space. *Home Depot*, IPR2025-00480, Paper 11, at 2–3 (“Petitioner argues that Patent Owner only previously targeted smartphones, tablets, and watches, whereas Petitioner, Home Depot, is the proprietor of a chain of hardware stores and did not have reason to anticipate assertion of the patent against it. . . . Petitioner’s arguments are persuasive.”).

The parties’ expectations weigh against discretionary denial.

C. *Elong* Favors Institution

In *Elong*, the Director explained that where a petition is filed with a motion for joinder, “discretionary considerations are first reviewed for the Petition on its own, and then reviewed if joinder were to be granted.” *Elong*, IPR2025-00258, Paper 16, at 2 (Director June 25, 2025). Here, discretionary considerations favor institution both with and without joinder.

1. Without joinder, the trial in the parallel litigation would still likely occur well after the final written decision

Without joinder, the trial in the parallel litigation would almost certainly occur after the final written decision would issue. The parallel litigation is at an early stage—it has no scheduling order and no trial date. Paper 8 at 3 n.1. But even based on time-to-trial statistics, a trial would not likely occur until January 2029. EX1054 (reporting 38.5 month median time-to-trial for S.D. Cal.). This would be well after a projected final written decision date of July 2027 in the current proceeding without joinder.

2. With joinder, the trial in the parallel litigation would likely occur more than two years after the final written decision

With joinder, *Elong* weighs even heavier against discretionary denial. Under the current schedule, the final written decision in the '1026 Proceeding will be issued by December 2026. Paper 10 at 1–3, 6. Thus, if joinder is granted, a final written decision in the joined proceeding would issue more than two years before an expected trial in the parallel litigation in January 2029.

D. Institution Is The Most Efficient Use of Resources

The Board is the most efficient forum to determine the validity of the '677 Patent. The Board will already determine the validity of the '677 Patent by December 2026 based on grounds identical to those set forth in the instant Petition. Institution here would not materially expand the Board's workload beyond what the Board is already doing in the '1026 Proceeding.

Notably, Resmed agreed to an understudy role designed to consolidate filings, avoid new discovery, and prevent any material disruption to the existing schedule. Paper 3 (Joinder Mot.), at 1, 7–9. Adding a non-active understudy petitioner to an already-instituted identical IPR has a nominal impact, if any, on the burden to the Board. In contrast, denying institution would necessarily mean that the validity of the '677 Patent would be litigated in multiple forums. Critically, this could also mean inconsistent results if the district court or a jury were to decide the validity of the '677 Patent based on the same grounds. Accordingly, centralizing the validity challenge to the '677 Patent to ensure consistency far outweighs any minimal (if any) burden imposed through institution.

IV. DISCRETIONARY DENIAL IS NOT APPROPRIATE EVEN UNDER PO'S REFERENCED CONSIDERATIONS

A. The Texas Litigations Are Irrelevant

PO argues that a jury in the Texas litigations against Verizon and Geotab will “reach a final determination on the validity grounds presented in the Petition against ['677 Patent] before any final written decision by the Board in this proceeding.” DDR, 1; *see also* DDR, 6. Incorrect. Verizon recently settled and the case was dismissed with prejudice on April 6, 2026 (EX1053), and Geotab agreed to a *Sotera* stipulation (*Geotab*, IPR2025-01026, Paper 4, at 100). Accordingly, there will be no determination on these grounds in the Texas litigations; this argument is completely void of merit.

B. The Merits Do Not Warrant A Discretionary Shortcut

PO argues that the Director should discretionarily deny the Petition because the patentability challenges are “decidedly weak.” DDR, 1. That argument is meritless: the Board and Director have already “decided” the same grounds by instituting review in the IPR in the '1026 Proceeding.

First, PO's effort to characterize the Petition as facially weak has already failed. The Board found that the identical *Geotab* petition met the institution standard, and the Director rejected PO's request for Director review of that decision. Second, merits are a secondary consideration. PO merely repeats its disagreement with the Board's written description and priority analysis. PO is free to continue pressing the same arguments in its POPR, but the Director need not re-adjudicate these issues at the discretionary denial stage. Rather, the question is whether PO has introduced any argument materially different from that raised in the '1026 Proceeding to warrant a different result here. It has not.

PO's principal contention—that the Board's institution analysis rested on incorrect law and a misunderstanding of FCC treatment of the 698–806 MHz bands—goes to the merits of the case, not to whether discretionary denial is appropriate. The Board already found a reasonable likelihood of success on these exact grounds. PO cannot relabel an ordinary merits dispute as a reason to discretionarily deny an already instituted identical challenge.

PO's FCC-based theory merely highlights its disagreement with the Board's institution-stage assessment of priority and written description. And regardless, PO is simply wrong. On the law, PO argues that the Petition and the Board failed to recognize that a genus can be sufficiently disclosed by "either a representative number of species falling within the scope of the genus or structure features common to the members of the genus so that one of skill in the art can visualize or recognize the members of the genus." DDR, 15 (citing to *Brita LP v. Int'l Trade Comm'n*, 156 F.4th 1326, 1335 (Fed. Cir. 2025)). But in *Brita* (the very case cited by PO), the Federal Circuit found lack of written description because the patent owner did "not identify a *representative number of species* or *common structural features* of members of the alleged genus." *Brita*, 156 F.4th at 1335 (emphasis added). Here, like *Brita*, PO has not provided any explanation of why the identified disclosures in the original application would be sufficiently representative or provides common structural features, other than its unsupported say-so. Accordingly, the Petition and the Board properly applied the correct legal standard.

On the facts, PO cites to a number of FCC orders from the early 2000s and before that "frequencies within the 698-806 MHz spectrum range...be allocated for uses ranging from the implementation of next generation applications and extensions of existing mobile and fixed networks to the implementation of various innovative stand-alone technologies." DDR, 10 (citations omitted). But these arguments do

not change the fact identified in the institution decision for the '1026 Proceeding that even after the time of alleged invention in 2006, “the Federal Communications Commission report adopted on July 31, 2007 notes that the 698-806 MHz spectrum currently is occupied by television broadcasters in TV Channels 52-69.” *Geotab*, IPR2025-01026, Paper 20, at 65 (citations omitted). Indeed, PO acknowledges that it was the “intent of this allocation [in the prior FCC orders] to provide spectrum allocation for advanced cellular communication services” (DDR, 13), not that there were cellular antennas that actually operated at such frequencies. Accordingly, the fact remains that the disclosure in the application of the '677 Patent still fails to convey to a POSITA that the inventors were in possession of the full scope of the claimed subject matter.

At bottom, the Board is already adjudicating the identical grounds on a full record in *Geotab*. PO raises no new arguments that would justify a different merits decision here. More importantly, instituting this Petition and joining it with *Geotab* conserves resources and ensures consistent results.

C. Additional Asserted Patents in the Parallel Litigation Do Not Change the Analysis

PO's remaining point—“that the more efficient approach is to rely on one proceeding that will resolve all issues between the parties” (DDR, 20)—is once again incorrect. There is no efficiency to be gained by determining the validity of the '677 Patent together with the validity of the four other asserted patents. The '677

Patent is unrelated to the four other asserted patents. Indeed, the earliest effective filing dates for the other patents range from 2002 to 2005, whereas the earliest effective filing date for the '677 Patent is 2006 (and the Petition established that the '677 Patent is not even entitled to that date). Further, the '677 Patent is directed at different subject matter than the four other patents and shares no limitations with them. Thus, there is no shared prior art, no shared terms, and simply no benefit to determining the validity of these patents together.

To the contrary, moving forward with validity of the '677 Patent in the parallel litigation will be inefficient and could lead to inconsistent results. The final written decision in the original '1026 proceeding will issue by December 2026, more than two years before a trial will likely occur in the parallel litigation based on time-to-trial statistics. Institution will ensure that the Board is the only forum to decide the validity grounds set forth in the instant Petition and encourage settlement between the parties far earlier than a January 2029 trial in district court.

V. CONCLUSION

For those reasons, the Director should decline discretionary denial and allow Resmed's petition to proceed in alignment with the Office's treatment of the identical *Geotab* petition and the Office's policies to promote and protect American manufacturing and ensure efficiency and consistency.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of **PETITIONER'S
OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY
DENIAL** is being served by electronic mail on PO's counsel of record listed below,
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