

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RESMED CORP.  
Petitioner,

v.

FRACTUS, S.A.  
Patent Owner.

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

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**PETITIONER'S SUR-REPLY TO PATENT OWNER'S  
REQUEST FOR DISCRETIONARY DENIAL**

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| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                |
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| 1001               | U.S. Patent No. 11,031,677                                                                                                                                                                                                        |
| 1002               | Prosecution History of U.S. Patent No. 11,031,677                                                                                                                                                                                 |
| 1003               | U.S. Patent No. 11,349,200                                                                                                                                                                                                        |
| 1004               | Prosecution History of U.S. Patent No. 11,349,200                                                                                                                                                                                 |
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| 1007               | Declaration of Daniel van der Weide, Ph.D.                                                                                                                                                                                        |
| 1008               | Curriculum Vitae of Daniel van der Weide, Ph.D.                                                                                                                                                                                   |
| 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")                  |
| 1013               | U.S. Patent App. Pub. No. 2007/0200773 ("Dou")                                                                                                                                                                                    |

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| 1014        | Declaration of James L. Mullins, Ph.D.                                                                                                                                                                                                                                       |
| 1015        | Curriculum Vitae of James L. Mullins, Ph.D.                                                                                                                                                                                                                                  |
| 1016        | Plaintiff's Disclosure of Asserted Claims and Infringement Contentions Against Geotab Pursuant to Local Patent Rules 3-1 and 3-2, <i>Fractus, S.A., v. Geotab Inc.</i> , No. 2:24-cv-01008 (E.D. Tex.), served March 12, 2025                                                |
| 1017        | D.I. 75, Fractus's Opening Claim Construction Brief, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Nov. 16, 2023)                                                                                                                                           |
| 1018        | D.I. 75-1, Exhibit 1 to D.I. 75, Fractus's Opening Claim Construction Brief, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Nov. 16, 2023)                                                                                                                   |
| 1019        | D.I. 92, Joint Claim Construction Chart, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Jan. 4, 2024)                                                                                                                                                        |
| 1020        | D.I. 115, Claim Construction Order, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Feb. 25, 2024) (Payne, M.J.)                                                                                                                                              |
| 1021        | D.I. 127, Order, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Mar. 15, 2024) (Gilstrap, D.J.)                                                                                                                                                              |
| 1022        | D.I. 82, Defendants ADT LLC and Vivint, Inc.'s Responsive Claim Construction Brief, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Dec. 14, 2023)                                                                                                            |
| 1023        | D.I. 253, Order, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Oct. 4, 2024) (Gilstrap, D.J.)                                                                                                                                                               |
| 1024        | D.I. 1, Complaint, <i>Fractus, S.A., v. Geotab Inc.</i> , No. 2:24-cv-01008 (E.D. Tex. Dec. 6, 2024)                                                                                                                                                                         |
| 1025        | 3GPP TS 36.101 v8.4.0 (2008-12) Technical Specification: 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Evolved Universal Terrestrial Radio Access (E-UTRA); User Equipment (UE) radio transmission and reception (Release 8), 2008 |

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                 |
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| 1026               | Ericsson white paper, "LTE—an introduction," no. 284 23-3124 Uen Rev B (June 2009)                                                                                                                                                 |
| 1027               | Declaration of Gordon MacPherson                                                                                                                                                                                                   |
| 1028               | '677 patent Claim Limitation Comparison Chart                                                                                                                                                                                      |
| 1029               | U.S. Patent Publication No. 2006/0214857 ("Ollikainen")                                                                                                                                                                            |
| 1030               | ETSI TS 145 005 V4.3.0 (2001-14) Technical Specification: Digital cellular telecommunications system (Phase 2+); Radio transmission and reception (3GPP TS 45.005 version 4.3.0 Release 4)                                         |
| 1031               | ZigBee Specification (Jun. 27, 2005)                                                                                                                                                                                               |
| 1032               | ETSI TS 125 308 V6.2.0 (2004-09) Technical Specification: Universal Mobile Telecommunications System (UMTS); UTRA High Speed Downlink Packet Access (HSDPA); Overall description; Stage 2 (3GPP TS 25.308 version 6.2.0 Release 6) |
| 1033               | ETSI TS 125 101 V6.5.0 (2004-09) Technical Specification: Universal Mobile Telecommunications System (UMTS); User Equipment (UE) radio transmission and reception (FDD) (3GPP TS 25.101 version 6.5.0 Release 6)                   |
| 1034               | ETSI TS 125 102 V6.0.0 (2003-12) Technical Specification: Universal Mobile Telecommunications System (UMTS); User Equipment (UE) radio transmission and reception (TDD) (3GPP TS 25.102 version 6.0.0 Release 6)                   |
| 1035               | ETSI TS 121 101 V6.0.0 (2004-12) Technical Specification: Universal Mobile Telecommunications System (UMTS); Technical Specifications and Technical Reports for a UTRAN-based 3GPP system (3GPP TS 21.101 version 6.0.0 Release 6) |

| Exhibit No. | Description                                                                                                                                                                                                                                                                                                                                                       |
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| 1036        | 3GPP TR 23.882 V1.2.3 (2006-06) Technical Report: 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; 3GPP System Architecture Evolution: Report on Technical Options and Conclusions (Release 7)                                                                                                                      |
| 1037        | 3GPP TR 23.882 V1.6.1 (2006-11) Technical Report: 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; 3GPP System Architecture Evolution: Report on Technical Options and Conclusions (Release 7)                                                                                                                      |
| 1038        | 3GPP TR 23.882 V1.8.0 (2007-02) Technical Report: 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; 3GPP System Architecture Evolution: Report on Technical Options and Conclusions (Release 7)                                                                                                                      |
| 1039        | Pages from E. Dahlman et al., <i>3G Evolution: HSPA and LTE for Mobile Broadband</i> (Academic Press 2d ed. 2008)                                                                                                                                                                                                                                                 |
| 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 <a href="https://2001-2009.state.gov/documents/organization/108955.pdf">https://2001-2009.state.gov/documents/organization/108955.pdf</a> (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) |

| Exhibit No. | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| 1043        | IEEE Std. 802.11b-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: Higher-Speed Physical Layer Extension in the 2.4 GHz Band (Jan. 20, 2000)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 1044        | Specification of the Bluetooth System version 2.0, volume 2 (issued Nov. 4, 2004)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 1045        | Second Report and Order, <i>In re Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket No. 06-150)</i> ; <i>Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102)</i> ; <i>Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket No. 01-309)</i> ; <i>Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services (WT Docket No. 03-264)</i> ; <i>Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules (WT Docket No. 06-169)</i> ; <i>Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06-229)</i> ; <i>Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (WT Docket No. 96-86)</i> ; <i>Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule (WT Docket No. 07-166)</i> , FCC 07-132 (Jul. 31, 2007), available at <a href="https://docs.fcc.gov/public/attachments/FCC-07-132A1.pdf">https://docs.fcc.gov/public/attachments/FCC-07-132A1.pdf</a> (visited May 21, 2025) |
| 1046        | ITU, Report ITU-R M.2134-0: Requirements related to technical performance for IMT-Advanced radio interface(s) (2008), <i>available at</i> <a href="https://www.itu.int/pub/R-REP-M.2134-2008/en">https://www.itu.int/pub/R-REP-M.2134-2008/en</a> (visited May 22, 2025)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

| Exhibit No. | Description                                                                                                                                                                                                                                                                                                                 |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1047        | Chart 45 to EX1016 [Confidential] <sup>1</sup>                                                                                                                                                                                                                                                                              |
| 1048        | Chart 44 to EX1016 [Confidential]                                                                                                                                                                                                                                                                                           |
| 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 <a href="https://www.uscourts.gov/data-news/data-tables/2025/12/31/statistical-tables-federal-judiciary/c-5">https://www.uscourts.gov/data-news/data-tables/2025/12/31/statistical-tables-federal-judiciary/c-5</a> (last accessed April 7, 2026) |

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

PO's Reply only confirms that it had no settled expectations and that American manufacturing considerations weigh against discretionary denial.<sup>2</sup>

## **I. PO CANNOT ESTABLISH SETTLED EXPECTATIONS**

### **A. PO Fails To Present Evidence of Commercialization, Assertion, or Licensing In The Medical Device Space**

PO cannot dispute that the '677 Patent has “not been in force for a significant period of time.” *See Microsoft Corp. v. Edge Networking Sys., LLC*, IPR2025-00617, Paper 12, at 2 (July 31, 2025) (challenged patent issued five years ago has “not been in force for a significant period of time”). Thus, there are no strong settled expectations for the challenged patent.

PO argues “settled expectations may exist for a patent in force since 2021,” citing to *Alliance Laundry*. DDR Rep., 4 (citing *Alliance Laundry Sys., LLC v. PayRange LLC*, IPR2025-00950, Paper 11 (Sept. 19, 2025) (informative)). But *Alliance Laundry* confirms exactly why PO had no settled expectations as to the '677 Patent. In *Alliance Laundry*, the Director found “some settled expectations favoring [patent owner]” because PO presented evidence that it had licensed the challenged patent *in petitioner's technology space*. *See* IPR2025-00950, Paper 6, at 2-3 (patent

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<sup>2</sup> PO asserts Petitioner “failed to address [PO]’s new evidence and merits.” DDR Rep., 1. First, this argument is grossly improper because it is beyond the scope of PO’s authorized reply. *See* EX3102. Second, it is false. Opp., 12-14.

owner “found success in the laundry and vending industries, attracting significant customers including WASH Multifamily Laundry Systems, LLC ... and reached patent licensing deals with [] WASH for PayRange’s technology.”). PO has presented no such evidence here.

Here, “the challenged patent has not been commercialized, asserted, marked, licensed or otherwise applied in [petitioner’s] technology space.” *Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Paper 11, at 2 (Sept. 4, 2025). PO does not dispute that its litigation assertions have been limited to antenna manufacturers, handset manufacturers, cellular carriers, wireless infrastructure providers, smart security systems, and location-based services. *Cf. Opp.*, 8-9 to DDR Rep. *generally*. Nor does PO address the Director’s decision in *Home Depot. Id.* Thus, “[t]hese considerations weigh against Patent Owner’s settled expectations and weigh in favor of Petitioner’s expectations.” *Home Depot*, Paper 11, at 3.

**B. Pre-Suit Correspondence Ending with PO’s Refusal to Negotiate with Resmed’s Supplier Does Not Create Settled Expectations**

PO argues that it had settled expectations because it “provided Petitioner with notice of the ’677 patent less than two weeks after it issued in 2021.” DDR Rep., 2. Incorrect. **First**, PO’s 2021 correspondence did not provide actual notice—the challenged patent was one among over 100 patents identified with no identification of any accused products, let alone claim charts to identify the allegedly infringing activity. EX2036, 4. And it is black-letter law that identifying a patent by itself does

not constitute actual notice. *Lubby Holdings LLC v. Chung*, 11 F.4th 1355, 1360-61 (Fed. Cir. 2021) (actual notice requires “[a]n affirmative communication of a *specific* charge of infringement by a *specific* accused product or device”).<sup>3</sup>

**Second**, the Director has already rejected this argument. In the original ’1026 Proceeding, PO likewise asserted that it “gave notice to Petitioners of the ’677 Patent in October of 2021.” *Geotab Inc. v. Fractus, S.A.*, IPR2025-01026, Paper 9, at 2 (Sept. 1, 2025). Yet the Director still ultimately found PO “has not developed strong settled expectations that favor discretionary denial.” *Geotab Inc.*, Paper 14, at 2.

**Third**, Resmed expected non-enforcement against it, given that it expressly notified Fractus that it was interfering with Resmed’s ability to save lives during the global pandemic. EX2037, 8 (“It is disappointing that Fractus is choosing to target ResMed’s resources at such a crucial time ... , given the continuing (and worsening in many parts of the world) global pandemic.”). PO’s own evidence confirms that at the time “ResMed [was] respond[ing] to [the] ‘humanitarian emergency’ over demand for CPAP” and other respiratory devices caused by COVID-19. EX2040.

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<sup>3</sup> PO notes it identified a specific product in November 2022. DDR Rep., 3. But as discussed *infra*, PO refused to identify the infringement charge—whether PO accused any product incorporating “any wireless device” or just those incorporating “multiband and/or miniaturized wireless antennas.” EX2037, 5-6.

***Fourth***, Resmed expected non-enforcement against it given Fractus's litigation history against antenna manufacturers. Specifically, Resmed notified Fractus that its antenna supplier "possess[es] the relevant technical information" and that any discussions would need to involve them. EX2037, 3. Indeed, Resmed's supplier repeatedly requested that Fractus provide claim charts "in order to assist our customer Resmed answer you in a meaningful way." EX2037, 1.

***Fifth***, although PO asserts that "Petitioner declined to engage in confidential settlement discussions" (DDR Rep., 4), it was PO who refused to engage. Both Resmed and its supplier repeatedly requested PO provide claim charts and to identify the specific infringement charge (whether PO was accusing "any wireless device" or just devices incorporating "multiband and/or miniaturized wireless antennas."). *See, e.g.*, EX2037, 5- 6. PO failed to provide such information, and thus, PO could not have settled expectations. To the contrary, Petitioner expected non-enforcement against it given PO's refusal to engage.

***Notably***, PO never explained its infringement allegations and was silent for more than two years before filing suit. Indeed, the Director has referred cases for merits consideration under similar facts. In *Jesco Lighting*, the patent issued in 2023, and as here, the patent owner contacted petitioner approximately two months after with no express infringement allegation. *Jesco Lighting Grp., LLC c. AGS Lighting Management LLC*, IPR2025-01328, Paper 8, at 4 (Nov. 3, 2025). The parties

negotiated over the course of five months, but at no point did patent owner “provide any explanation of [its] allegations of infringement.” *Id.* at 5. Nearly a year after negotiations ended, patent owner filed suit. *Id.* Although PO argued settled expectations, going into detail about the parties’ licensing discussions (IPR2025-01328, Paper 6, at 2-8), the Director referred the case for merits consideration (IPR2025-01328, Paper 9, at 2).

PO’s refusal to provide its infringement allegations, years of silence before filing suit, and the Director referral decisions based on nearly identical facts confirm PO had no settled expectations.

## **II. PO’S OPPOSITION CONFIRMS RESMED’S SHIFT TO AMERICAN MANUFACTURING COMES AT SIGNIFICANT COST**

The March 11 Memo considerations favor institution. It is undisputed that PO is a foreign company with *no* U.S.-manufactured products that compete with the accused products. PO complains “Petitioner does *not* currently manufacture accused products in the U.S.” DDR Rep., 5. But PO ignores the language of the Memo: the Director will consider “the extent to which any products accused of infringement ... are related to investments in American manufacturing operations.” Resmed has already invested millions in its U.S. operations, and in weeks, AirSense products will be manufactured in Atlanta. Wheatley Decl., ¶4. Resmed’s commitment to manufacture these products in the U.S. by June (when it could continue manufacture in Singapore) confirms the significance of this shift—one that should be protected.

Date: April 23, 2026

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of **PETITIONER'S SUR-REPLY TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** is being served by electronic mail on Patent Owner's counsel of record listed below, pursuant to its Mandatory Notices:

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