

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 AUTHORIZED REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

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I. INTRODUCTION

PO's Preliminary Response ("POPR") is a recycled version of its POR from *Geotab Inc. v. Fractus, S.A.*, IPR2025-01026, Paper 29 ("Geotab IPR"). This tactical importation of merits briefing into the institution stage of this copycat joinder is a transparent attempt to obtain a proxy opinion to use in the Geotab IPR. The Board should reject this collateral attack on an institution decision that has already survived Director Review. Furthermore, PO's Ground 3 arguments rely on attorney argument and raises factual disputes that belong at trial, not at the institution stage.

II. ARGUMENT

A. PO's POPR is an Improper Collateral Attack on the Geotab IPR Institution Decision

"The determination...whether to institute an inter partes review...shall be final and nonappealable." 35 U.S.C. § 314(d). The Supreme Court has reaffirmed this unassailable rule numerous times. *See Thryv, Inc. v. Click-To-Call Techs., LP*, 590 U.S. 45 (2020); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, (2016). Here, PO attempts to relitigate the final and nonappealable decision by submitting arguments that are not responsive to the Petition.

First, PO openly admits its POPR is a collateral attack on the Board's Institution Decision in the Geotab IPR ("Geotab ID"). *Geotab*, Paper 20 (PTAB Dec. 3, 2025). PO states that the POPR is intended to "prove[] that the Board's institution of the Geotab proceeding was in error," and argues that if "the Board denies

institution of this proceeding it should ... deny institution [of Geotab IPR] as well.”

POPR, at 1, 56. This is a blatant attempt to circumvent the finality of institution.

Next, PO has already advanced these arguments twice. PO's POPR substantially mirrors its POR in the Geotab IPR and its rejected Request for Director Review. *Compare* POPR at 23-44, *with Geotab*, Paper 23 (PTAB Dec. 17, 2025) at 4-13 and Paper 29 (PTAB Feb. 25, 2026) at 21-40; *see* Paper 30 (PTAB Mar. 3, 2026). Despite having been denied review once before, PO again devotes more than 20 pages attacking the Geotab ID, which is not even of record here. POPR, at 23-44.

Paradoxically, the fact that PO recycled its merits arguments from the Geotab IPR POR and Request for Director Review confirms that joinder is appropriate. By repackaging the same arguments, PO merely confirms that joinder would present no new substantive dispute and is, therefore, appropriate. The existing schedule in the Geotab IPR already provides PO a fair opportunity to develop its arguments through the normal course of merits briefing there.

Finally, there is no precedent for a patent owner obtaining reconsideration of an instituted IPR *after a rejected Director Review Request* by filing a POPR in a separately-docketed copycat proceeding. PO cites no such authority because none exists. Permitting this maneuver would allow any PO to obtain a premature FWD on an incomplete record. This subverts the very purpose of joinder and the Board's mandate to secure “the just, speedy, and inexpensive resolution” of every IPR

proceeding. 37 C.F.R. § 42.1(b). This request should be denied.

B. PO's Arguments on Ground 3 Raises Factual Disputes That Belongs at Trial, Not at Institution

The unrebutted expert record on Ground 3 reinforces institution. Dr. van der Weide provided detailed technical analysis that Baliarda-543 qualifies as prior art because the '677 Patent is not entitled to the benefit of the '429 Application's priority date. EX1007 ¶¶292-323. PO's expert reached the opposite conclusion—"Baliarda-543 is not prior art to the '677 Patent"—but expressly declined to rebut Dr. van der Weide's analysis. EX2010 ¶54. Instead, PO argues that the '677 Patent inventors had possession of the invention before Baliarda-543. POPR, at 43.

Whether the '429 Application conveys possession of the claimed scope is an objective factual inquiry. *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). Such disputes should be resolved at trial on a developed record, with expert testimony tested by cross-examination, not at institution on mere attorney argument alone.¹ The Board has already instituted the Geotab IPR based on the unrebutted Dr. van der Weide's expert analysis (Geotab ID, at 73), and the same reasoning governs here. Regardless, these factual disputes are more appropriately decided on the full record developed after deposition.

¹ Indeed, PO has noticed Dr. van der Weide's deposition for January 30, 2026 in the Geotab IPR. *See Geotab*, Paper 26 (PTAB Jan. 9, 2026).

Date: April 28, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of **PETITIONER'S
AUTHORIZED REPLY TO PATENT OWNER'S PRELIMINARY
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