

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
Patent No. 11,031,677

**PATENT OWNER'S REQUEST FOR REHEARING OF DISCRETIONARY
DENIAL DECISION**

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Rules

37 C.F.R. § 42.71 1

I. Introduction

Pursuant to 37 C.F.R. § 42.71, Patent Owner Fractus, S.A. (“Patent Owner”) submits the following request for rehearing of the Notice of Decisions on Institution of May 6, 2026 (Paper 20) (“Discretionary Denial Decision”). The present request is timely filed within 14 days of entry of an institution decision in this proceeding. 37 C.F.R. § 42.71(d); Interim Director Discretionary Process § V.C (“If the Director issues a decision determining that discretionary denial is not appropriate, a party should file a single request for rehearing or Director Review after the Board panel issues its decision.”).¹

II. Background

On January 2, 2026, Petitioner filed a “copycat” petition to the petition filed in *Geotab, Inc. v. Fractus, S.A.*, IPR2025-01026 (“the ’1026 proceeding”). Petitioner identified two real parties-in-interest (“RPIs”) in the petition: “Resmed Corp. and its parent Resmed Inc.” Petition at xiv.

Included with the Petition was a Motion for Joinder (Paper 3) seeking to have the present proceeding joined with the ’1026 proceeding. The Discretionary Denial Decision issued May 6, 2026. On May 29, 2026, Patent Owner filed an Updated

¹ <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process> (last accessed June 15, 2026).

Mandatory Notice in the present proceeding (Paper 22) notifying the Board of a settlement between the parties to the '1026 proceeding and their intent to file a motion to terminate the '1026 proceeding. Shortly thereafter, on June 2, 2026, the Director issued a Notice of Decisions on Institution (Paper 25) (“Institution Decision”) instituting the present proceeding. Subsequent to both the Discretionary Denial Decision and the Institution Decision, the parties in the '1026 proceeding filed a Joint Motion to Terminate Proceeding on June 3, 2026. On June 16, 2026, the Board issued a Termination (Paper 36 in the '1026 proceeding) terminating the '1026 proceeding.

III. Legal Standard

In general, a request for rehearing is limited to “matter[s ...] previously addressed in a motion, an opposition, a reply, or a sur-reply.” 37 C.F.R. § 42.71(d). A change in circumstances subsequent to an initial discretionary denial decision, however, provides sufficient cause for the Director to reconsider that decision. Interim Director Discretionary Process § V.D (“A party may raise changed circumstances, for example, a change in trial date, in a request for rehearing or a request for Director Review filed within the applicable time period.”).

Here there has been a change in circumstances. First, with regard to joinder issues, a proceeding cannot be joined to a terminated proceeding and parties to the '1026 proceeding have moved for termination. *Ubiquiti Inc., v. XR Commc'ns, LLC*,

IPR2024-00148, Paper 12, p. 12 (P.T.A.B. May 6, 2024). The '1026 proceeding has now been terminated.

Second, a petition is required to identify all RPIs *before* institution and that did not happen here. As discussed by the Director:

Today, I am restoring the Office's pre-SharkNinja practice of **requiring petitioners to identify the real parties in interest ("RPis") to their petitions before institution** by designating as precedential *Corning Optical Communications RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (except for § ILE. I).

The AIA provides that: "A petition filed under section 311 may be considered *only if...* the petition [for inter partes review] identifies all real parties in interest." 35 U.S.C. § 312(a)(2) (emphasis added); see also 35 U.S.C. § 322(a)(2).

Memorandum, Precedential designation of *Corning Optical Communications RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (except for § II.E.1) (Oct. 28, 2025) (Italics original, bolding and underlining added).

IV. Argument

A. Instituting this IPR is an Inefficient use of Board Resources

Instituting the present proceeding will be an inefficient use of Board resources; therefore, the Director should reconsider the Discretionary Denial

Decision. Specifically, the '1026 proceeding has been terminated so there is no proceeding to which this one can be joined. *See* IPR2025-01026, Paper 36; *Ubiquiti*, IPR2024-00148, Paper 12 at 12. Moreover, the briefing in the two proceedings is different. *Compare* IPR2025-01026, Paper 12 *with* IPR2026-00191, Paper 10. Accordingly, this proceeding will begin fresh at the very beginning of the trial stage. As a result, the Board will gain little efficiency from the work it has expended in the '1026 proceeding given the different evidence, issues and briefing present in this proceeding.

The termination of the '1026 proceeding undercuts Petitioner's justification for filing a "copycat" petition, which was the efficiencies gained from the '1026 proceeding: *See* Motion for Joinder (Paper 3) at 2 ("Because joinder would promote judicial efficiency in determining patentability without prejudicing Patent Owner, the Board should grant this Motion.").

Indeed, Petitioner concedes that instituting this proceeding in series with the '1026 proceeding would be inefficient: "In reality, administrative efficiency is maximized by resolving a single, consolidated IPR proceeding rather than through serial, duplicative challenges." Petitioner's Reply to Patent Owner's Opposition to Motion for Joinder (Paper 8) at 4.

Finally, Petitioner argued that 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.

Petitioner's Opposition to Patent Owner's Request for Discretionary Denial (Paper 12) at 15. The present proceeding can no longer “proceed in alignment with” the '1026 proceeding – the '1026 proceeding has been terminated, and the two cases have different substantive considerations. Accordingly, all of Petitioner's justifications for not discretionarily denying its “copycat” petition no longer exist. Therefore, reconsideration and discretionarily denying the petition in this proceeding is appropriate.

B. Petitioner Failed to Identify a Real Party-In-Interest

Petitioner failed to identify at least one party that it considers an RPI. Therefore, the Director should reconsider the institution decision in the proceeding and deny the petition.

As indicated above, Petitioner identified two RPIs in the Petition, Resmed Corp. and Resmed Inc. No other RPIs were identified by Petitioner prior to institution. It is clear from the record, however, that Petitioner believes that there is *at least* one other RPI to this proceeding: Taoglas.

As indicated in the emails exchanged between Patent Owner and Petitioner (previously submitted as Exhibit 2037 in this proceeding), it is Petitioner's position that Taoglas is the relevant party that Fractus should be engaging with. EX2037 at 7 ("We have now pointed out multiple times that the entity to engage with is our supplier of wireless antennas.").

Petitioner took the position that Patent Owner should direct all of its discussions regarding infringement of its patents to Taoglas:

As such, please direct the claim charts and future correspondence to our supplier Taoglas, via email to legalnotices@taoglas.com ...

EX2037 at 9.

In fact, Petitioner repeatedly added Taoglas to its discussions with Patent Owner, "insisting" that Taoglas be involved. EX2037 at 3 ("ResMed equally insists that representatives from Taoglas be involved in our discussions going forward."), 6 ("we must insist that our supplier be at least involved in any further discussions, once we have claim charts from you to evaluate."). Petitioner sought to include Taoglas in its analysis of Patent Owner's infringement positions. EX2037 at ("Second, your latest email and attachment provide no further information for ResMed **and its supplier** to evaluate.") (emphasis added). Finally, the CEO of Taoglas took the lead in its discussions with Patent Owner, promising assistance and

support to Petitioner. EX2037 at 1 (“As previously requested by Taoglas and Resmed, we need to see the claims from Fractus **in order to assist our customer Resmed** answer you in a meaningful way. Without knowing what the claims are **we cannot support Michael and his team.**”) (emphasis added).

Accordingly, Petitioner has indicated that it believes Taoglas is an RPI by: 1) representing that Taoglas was the party to whom Patent Owner should direct its infringement concerns, 2) “insisting” on Taoglas’ participation in its discussions with Petitioner, 3) having Taoglas’ CEO take the lead in its discussions with Patent Owner, and 4) receiving “assistance” and “support” from Taoglas. Petitioner had many opportunities to identify all RPIs prior to institution but failed to do so. For example, Petitioner filed Updated Mandatory Notices (Paper 24) the day before the Institution Decision issued, but failed to update the identified RPIs to include Taoglas.

As Petitioner was required to identify all RPIs prior to institution, but failed to do so, the Director should reconsider the Discretionary Denial Decision and deny the petition in this proceeding.

V. Conclusion

In view of the foregoing, Patent Owner submits that reconsideration of the Discretionary Denial Decision is appropriate, and the petition in this proceeding should be discretionarily denied.

Dated: June 16, 2026

Respectfully submitted,

/Mark J. DeBoy/

Mark J. DeBoy (Reg. 66,983)

Attorney for Patent Owner

Fractus S.A.

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing **PATENT OWNER'S REQUEST FOR REHEARING OF DISCRETIONARY DENIAL DECISION** was served via email (as previously consented to by counsel) on June 16, 2026 to lead and backup counsel of record for Petitioner as follows:

PH-Resmed-Fractus@paulhastings.com

Dated: June 16, 2026

/Mark J. DeBoy/

Mark J. DeBoy (Reg. No. 66,983)
Attorney for Patent Owner
Fractus S.A.