PUBLIC VERSION

Filed on behalf of Resmed Corp. Filed: October 1, 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. IPR2026-00341
U.S. Patent No. 8,362,960

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

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1003	Declaration of Manos M. Tentzeris, Ph.D ("Tentzeris")
1004	Curriculum Vitae of Manos M. Tentzeris, Ph.D
1005	U.S. Patent Pub. No. 2003/0193437 to Kangasvieri et al. ("Kangasvieri")
1006	U.S. Patent No. 6,195,048 to Chiba et al. ("Chiba")
1007	U.S. Patent No. 6,909,402 to Vance ("Vance")
1008	Karaboikis et al., "Compact Dual-Printed Inverted-F Antenna Diversity Systems for Portable Wireless Devices," IEEE Antennas and Wireless Propagation Letters, Vol. 3 (2004)
1009	Inoue et al., "Pattern Calibration Free Antenna By Suppressing Mutual Coupling Between Elements," Proceedings of ISAP'04, Sendai, Japan, 1A2-4 (2004)
1010	U.S. Patent No. 6,606,071 to Cheng ("Cheng")
1011	U.S. Patent No. 6,424,300 to Stanford et al. ("Stanford")
1012	U.S. Patent No. 6,204,819 to Hayes et al.
1013	U.S. Patent No. 6,518,929 to Gilmore
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1015	U.S. Patent No. 6,639,560 to Kadambi et al.
1016	U.S. Patent No. 7,109,923 to Ollikainen et al.
1017	Ciais et al., "Design of an Internal Quad-Band Antenna for Mobile Phones," IEEE Microwave and Wireless Components Letters, Vol. 14, No. 2 (Apr. 2004), pp. 148–150
1018	"IBM Unveils First Biometric ThinkPad, Offering Security at Your Fingertips," Phys.org (Oct. 4, 2004)
1019	Dialogue Flybook User's Manual, Revision 1.02, Part No. DTC-FA33I-01-02 (2003)
1020	Wong et al., "Isolation between GSM/DCS and WLAN Antennas in a PDA Phone," Microwave and Optical Technology Letters, Vol. 45, No. 4 (2005), pp. 347–352
1021	U.S. Patent Application Publication No. 2006/0082503 to Gaucher et al.
1022	U.S. Patent Application Publication No. 2004/0113848 to Gaucher et al.
1023	IEICE Proceedings Archive entry for Inoue et al., "Pattern Calibration Free Antenna by Suppressing Mutual Coupling Between Elements," Proceedings of the 2004 International Symposium on Antennas and Propagation (ISAP 2004), Session 1A2-4, listing publication date Aug. 18, 2004, Online ISSN 2188-5079, and DOI: 10.34385/proc.12.1A2-4, available at https://www.ieice.org/publications/proceedings/summary.php?expandable=12&iconf=ISAP&session_num=1A2&number=1A2-4&year=2004.

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1024	Google Scholar Citation Record for Yuki Inoue et al., "Pattern Calibration Free Antenna by Suppressing Mutual Coupling Between Elements"
1025	Georgakopoulos et al., "Coupling Modeling and Reduction Techniques of Cavity-Backed Slot Antennas: FDTD Versus Measurements," IEEE Transactions on Electromagnetic Compatibility, Vol. 43, No. 3, Aug. 2001, pp. 261–272
1026	Sievenpiper et al., "High-Impedance Electromagnetic Surfaces with a Forbidden Frequency Band," IEEE Transactions on Microwave Theory and Techniques, Vol. 47, No. 11, Nov. 1999, pp. 2059–2074.
1027	U.S. Patent No. 6,961,545 to Tehrani et al.
1028	Complaint, *Fractus, S.A. v. Resmed Corp.*, No. 3:25-cv-02680-LL-JLB (S.D. Cal.) (Oct. 9, 2025)
1029	Declaration of Dr. Ingrid Hsieh-Yee
1030	Yang et al., "Microstrip Antennas Integrated With Electromagnetic Band-Gap (EBG) Structures: A Low Mutual Coupling Design for Array Applications," 51 IEEE Trans. Antennas & Propagation 2936 (2003).
1031	Constantine A. Balanis, Antenna Theory: Analysis and Design, (3d ed. 2005) (excerpt).
1032	Declaration of Dwayne Wheatley ("Wheatley Decl.")
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1035	DocketNavigator – Stays Pending IPR for Southern District of California, 2020-2026
1036	U.S. District Courts – Median Time Intervals to Disposition, available at https://www.uscourts.gov/data-news/data-tables/2026/06/30/statistical-tables-federal-judiciary/c-5 (last accessed September 22, 2026)
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1038	Taoglas Website, available at https://www.taoglas.com/markets/aerospace-and-defense/ (last accessed September 22, 2026)
1039	"ResMed responds to 'humanitarian emergency' over demand for CPAP devices with new factory," MEDTECHDIVE (January 10, 2023) (https://www.medtechdive.com/news/resmed-RMD-ceo mick-farrell-jp-morgan-health-sleep-apnea-devices/640036/) (last accessed September 22, 2026)

I. INSTITUTION ADVANCES THE OFFICE'S CURRENT POLICIES

The record establishes that institution will advance the Office's current policies, and thus compels rejection of PO's request for discretionary denial.

First, the now-expired U.S. Patent No. 8,362,960 (the "'960 Patent") should have never issued, and IPR is necessary to correct material errors by the Office. Specifically, the Examiner allowed the challenged claims based on the substantially orthogonal antenna limitation, but failed to perform an adequate search of this limitation. Indeed, the Petition establishes Kangasvieri (Ex. 1005) discloses this very limitation, but the Examiner never applied it in any rejection or otherwise discussed it despite its identification in an IDS. *See* § III.A. Thus, the Examiner erred in allowing the '960 Patent without substantive consideration of Kangasvieri.

***Second*,** this is the first and only post-grant challenge to the now-expired '960 Patent, and the PTAB would be the most efficient and true alternative forum to decide the validity of this patent. No scheduling order has issued, and no trial date has been set. And even based on time-to-trial statistics, trial would not occur until January 2029, well after the projected FWD date of January 2028. Further, the Southern District of California has consistently stayed litigation pending IPRs, eliminating any concern of inconsistent outcomes or duplication of efforts.

***Third*,** PO is not entitled to settled expectations under *Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Paper 11 at 2–3 (Sept. 4, 2025)

(informative). The '960 Patent is directed to handsets and has not been commercialized, asserted, marked, licensed, or otherwise applied in the medical device space, let alone to sleep and respiratory care machines. PO only previously targeted cellular carriers, security devices, and location-based services, and Resmed did not anticipate the assertion of the '960 Patent based on this history.

Fourth, Resmed maintains an extensive and expanding domestic manufacturing presence tied to the accused products, including the initial phases of [redacted] Wheatley Decl. ¶¶ 2-5.

In contrast, PO's attempt to invoke discretionary considerations fails. *First*, PO points to the patent's age and the parties' prior communications but these facts create no settled expectations where, as here, PO neither licensed nor asserted the patent in this technology space and PO refused to engage in discussions or share its infringement allegations. *Second*, PO attempts to rely on its recent domestic portfolio licenses, but these licenses are entitled to no weight given that the challenged patent played no role in driving their execution. *Last*, PO complains about Resmed's past foreign manufacturing but Resmed's ability to manufacture

abroad only underscores the significant cost incurred by Resmed to shift the manufacture of the accused products to the U.S.

Considering all factors, the Director should decline discretionary denial to promote the Office's policies, protect American manufacturing, and to allow Resmed's petition to serve as a true, "effective *alternative* to district court patent litigation for resolving [the parties'] dispute over patent validity." *Magnolia Med. Tech., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 2 (May 13, 2026).

II. PROCEDURAL AND LITIGATION BACKGROUND

PO filed suit against Resmed Corp. in the Southern District of California on October 9, 2025, asserting the '960 Patent for the first time in any litigation along with four other patents. Ex. 1028; *Fractus, S.A. v. Resmed Inc. et al.*, No. 3:25-cv-02680-LL-JLB, Dkt. 1 (S.D. Cal. Oct. 9, 2025). The complaint accuses Resmed's AirSense 10, AirCurve 10, AirSense 11, AirCurve 11, and Connectivity Module products. *Id.* PO voluntarily dismissed Resmed Inc. on January 26, 2026, leaving Resmed Corp. as the sole defendant. Ex. 1033 (Dkt. 23). PO later obtained leave to amend and on September 2, 2026 filed a First Amended Complaint (Ex. 1034) dropping one patent and asserting another patent related to the '960 Patent. On September 16, 2026, Resmed Corp. moved to dismiss the entire action because the asserted patents are directed to mobile communications devices, not to sleep diagnostic and treatment devices that must remain stationary while in use. Ex. 1033

(Dkt. 44). The litigation remains in its earliest stage: no scheduling order has issued and no trial date has been set. *Id.* (Dkt. 32).

III. INSTITUTION IS WARRANTED

A. IPR Is Necessary To Correct Material Errors By The Office

The examination of the '960 patent suffered from material errors, and Board resources would be well spent reviewing the patentability of the claims that issued as a result. *See Microsoft Corp. v. Partec Cluster Competence Cent. GmbH*, IPR2025-00318, Paper 9 at 3 (June 12, 2025). The Examiner identified the substantially orthogonal arrangement of the two antennas as the sole distinguishing feature and allowed the challenged claims on that basis. Ex. 1002 at 622-624, 654. That allowance followed only a cursory examination: the Examiner's EAST search records reflect approximately ***eleven searches*** conducted in ***roughly twelve minutes*** on the same day the Notice of Allowance issued, and nothing suggests those results were ever reviewed against the limitation on which allowance turned. *Id.* at 633-634, 656. Had the Examiner conducted an adequate search, the application would not have been allowed.

1. The Examiner overlooked disclosed material art

The Examiner erred in allowing the application without substantive consideration of Kangasvieri (Ex. 1005). Kangasvieri was of record—PO submitted it in an information disclosure statement on January 30, 2012. Ex. 1002 at 145. Yet

the Examiner never applied Kangasvieri in any rejection, never addressed it in the reasons for allowance, and never otherwise discussed it. *Id.* at 603-606, 619-625, 648-650. That omission was consequential.

Kangasvieri is directed to multiple-antenna arrangements in a compact wireless device and expressly discloses the substantially orthogonal antenna orientation on which allowance depended. Ex. 1005 ¶¶ 1, 3, 4, 66, 69, FIGS. 1, 2, 5a, 5b; Ex. 1003 ¶¶ 45-46; Pet. 12, 16-65. Indeed, in allowing claim 21 the Examiner reasoned only that the single applied reference, Inatsugu, "fails to further teach that the first side and the second side are substantially orthogonal." Ex. 1002 at 654. But Kangasvieri teaches precisely that feature. The Examiner's failure to apply or even address Kangasvieri—alone or in combination with the references discussed in § III.A.2—amounted to material error warranting referral, particularly because Kangasvieri "was not a basis for rejection during examination, is not substantially the same as [any] prior art the Examiner applied," and "include[s] specific teachings that impact patentability of the challenged claims." *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 5-6 (May 19, 2025) (precedential).

2. The Examiner failed to perform an adequate search on the point of novelty

Conducting approximately ***eleven searches*** in ***roughly twelve minutes*** is

deficient on its face. The Examiner therefore erred by conducting a deficient search that necessarily failed to identify additional highly pertinent prior art.

An examination compressed into the intervals reflected in the search records does not evidence the "thorough understanding of the invention disclosed and claimed" that the Office requires. M.P.E.P. § 904. A thorough search would have led the Examiner to Chiba, Vance, and Inoue—none of which was cited during prosecution. Chiba (Ex. 1006) is directed to a multifrequency inverted-F antenna for use as an internal antenna in compact radio communication devices such as portable telephones. Ex. 1006 at 1:4-11, 2:33-36; Ex. 1003 ¶ 47. Vance (Ex. 1007) is directed to a multi-band planar inverted-F antenna structure for compact wireless terminals and handheld devices, and teaches an antenna arranged to operate in a frequency band used for the wireless services recited in dependent claim 7. Ex. 1007 at 2:51-66. And Inoue (Ex. 1009) teaches suppression of mutual coupling between adjacent antenna elements using a conductive structure connected to the ground plane—the conductive strip recited in dependent claims 5 and 6. Ex. 1009 at 17-18.

Proper consideration of these references, in the combinations set forth in the Petition, would have made clear that the challenged claims should not have issued. Pet. 16-65; Ex. 1003 ¶¶ 45-47. The Examiner's failure to locate Chiba, Vance, and Inoue—compounded by his failure to substantively consider Kangasvieri, which

was already before him—constitutes material error. These claims should never have been allowed.

3. Correcting material error by the Office is an appropriate and worthwhile use of Board resources

The Director has repeatedly emphasized that the Office institutes review to reconsider its own decisions and correct errors made in the original patent grant. *Magnolia*, IPR2026-00097, Paper 17 at 6, 8; *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Paper 12 at 3-4 (July 16, 2025) (informative). Precedent confirms that a substantial showing of examiner error can overcome factors that might otherwise support discretionary denial. *See Apple Inc. v. Advanced Coding Techs. LLC*, IPR2025-01103, Paper 11 at 2 (Oct. 17, 2025); *Anthony Inc. v. ControlTec LLC*, IPR2025-00559, Paper 12 (July 16, 2025) ("Petitioner appears to show a material error by the Office, and it is an appropriate use of Office resources to review the potential error.").

This is so even when PO argues it had strong settled expectations. *Skullcandy, Inc. v. Earin AB*, IPR2025-00690, Paper 9 at 2 (July 31, 2025) ("While ordinarily [strong settled expectation] counsels for discretionary denial, Petitioner persuasively explains that the patent examiner materially erred during prosecution of the challenged patent."); *Xencor, Inc. v. Merus N.V.*, IPR2025-00605, Paper 12 at 2-3

(July 17, 2025) ("discretionary denial under 35 U.S.C. § 325(d) is not appropriate because the Office materially erred during prosecution").

Here, the Office allowed the challenged claims based solely on the substantially orthogonal antenna arrangement—an arrangement Kangasvieri discloses. The Board should intervene to correct this material error.

B. The *Fintiv* Factors Favor Institution

PO does not address the Fintiv factors, effectively conceding that they favor institution. And they do. The FWD will issue before any trial in the parallel litigation and the district court will almost certainly stay the litigation upon institution. Thus, the *Fintiv* factors support institution and will further the Board's objective to advance "efficiency, fairness, and the merits." *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (Mar. 20, 2020).

Factor 1 (stay) favors institution because stay is likely. *Imperative Care, Inc. v. Inari Med., Inc.*, IPR2025-00289, Paper 9 at 2 (June 12, 2025) ("evidence that the district court is likely to grant a stay if this proceeding is instituted" weighs against discretionary denial). Since 2020, the Southern District of California has granted every motion to stay on a patent with an instituted IPR.[1] Ex. 1035.

[1] One was denied as a pre-institution stay and another was denied because the district court found that it lacked subject matter jurisdiction over the case. *Togail Tech.,*

Factor 2 (proximity to trial) strongly favors institution because no trial date is pending. *RØDE Microphones, LLC, et al. v. Zaxcom, Inc.*, IPR2025-00557, Paper 11 at 2 (July 17, 2025) (denying request for discretionary denial where "there is no scheduled trial date in the co-pending district court litigation"). Further, the median time-to-trial statistics for the Southern District of California suggests trial would not occur until January 2029 (Ex. 1036)—a year after the projected FWD date of January 2028. *See Amazon.com, Inc. et al. v. NL Giken Inc.*, IPR2025-00250, Paper 14 at 2 (May 16, 2025) (denying request for discretionary denial based, in part, on time-to-trial statistics suggesting trial would occur six months after final written decision).

Factor 3 (investment in parallel litigation) favors institution because neither the parties nor the court has invested meaningfully in the merits. *Am. Airlines, Inc. v. Intellectual Ventures I LLC*, IPR2025-00785, Paper 11 at 2-3 (Aug. 29, 2025) ("evidence that there has been little investment in the district court proceedings" favors institution). The pleadings remain unsettled, no schedule has issued, and fact discovery, claim construction, and expert work all lie ahead. Ex. 1033.

Factor 4 (overlap) favors institution because the case as to the '960 Patent will almost certainly be stayed, eliminating any potential for inconsistent outcomes

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Ltd. v. Apple Inc., No. 23-cv-00610 (S.D. Cal. May 31, 2023); *Pulse Elec., Inc. v. UD Elec. Corp.*, No. 3:20-cv-01676 (S.D. Cal. Apr. 9, 2021).

or duplication of efforts. *Snap, Inc. v. SRK Tech. LLC*, IPR2020-00820, Paper 15 at 10 (Oct. 21, 2020) ("Based … [in part on] the stay of the parallel District Court proceeding, the considerations of the fourth Fintiv factor weigh against exercising discretion to deny institution.").

Factor 5 (same party) is at most neutral, particularly here where there is minimal risk of "redoing the work of another tribunal" on the same or substantially same issues for the same party. *See Snap,* IPR2020-00820, Paper 15 at 16.

Factor 6 (other considerations) strongly favors institution. First, this Petition is the sole challenge to the '960 Patent before the Board—a "crucial fact" favoring institution. *Google LLC v. Uniloc 2017 LLC*, IPR2020-00115, Paper 10 at 6 (May 12, 2020). Second, the Petition presents strong arguments for unpatentability including grounds based on Kangasvieri which plainly discloses the feature that PO relied upon to obtain allowance. *See Samsung Elecs. Co. Ltd. v. Dynamics Inc.*, IPR2020-00505, Paper 11 at 14 (Aug. 12, 2020) (finding case merits favor institution). Third, institution is consistent with the significant public interest against "leaving bad patents enforceable." *Thryv, Inc. v. Click-To-Call Techs., LP*, 590 U.S. 45, 55 (2020). Indeed, Petitioner has a significant patent portfolio of its own, and institution here would further the intent of the AIA to prevent the "diver[sion of] resources from the research and development of inventions." H.R. Rep. No. 112-98, pt. 1, at 48 (2011). Last, given its specialized knowledge and familiarity with

patent law, the PTAB is a far more efficient forum to decide invalidity, particularly in view of the fact that the judge in the Parallel Litigation has only presided over 40 patent cases. Ex. 1037.

C. PO Is Not Entitled To Settled Expectations

PO is not entitled to settled expectations because Resmed did not anticipate that PO would assert the '960 Patent against it based on PO's public actions and history. As set forth in Resmed's motion to dismiss, the '960 Patent is directed to handsets and expressly states that "[i]t is an object of the present invention to provide a ***handset or handheld device***." Ex. 1001, 1:29-30. Indeed, each and every claim of the '960 Patent recites a "handheld device." Ex. 1001, cls. 1, 9, 13. And the accused products—machines plugged into the wall that deliver a continuous flow of positive air pressure through tubing running from the machine to a mask worn over the patient's mouth and/or nose—are certainly not that.

Consistent with this targeted mobile communications and handset technology, Fractus has never asserted its patents against a medical device company despite litigating its patents for over a decade. Instead, Fractus has asserted its patents against handset manufacturers (Samsung, LG, ZTE, TCL), cellular carriers (AT&T, T-Mobile, Sprint, Verizon), antenna manufacturers (Amphenol), wireless infrastructure providers (American Tower) and more recently, smart security systems (Vivint, ADT) and location-based services (Geotab). PO's own

publications also confirm that focus, describing its licensing program in terms of the "Internet of Things (IoT) sector," "U.S. smart home market," and "connected safety devices" such as "monitored alarm panels, hubs or home base stations, cameras, wearables, or pendant devices." Ex. 2006; Ex. 2008; Ex. 2007. As a manufacturer of sleep and respiratory care devices, Resmed did not have any reason to expect that PO would assert the '960 Patent in the medical device space based on PO's public actions and publications.

Notably, this proceeding stands on all fours with *Home Depot*. There, like here, patent owner "only previously targeted smartphones, tablets, and watches." IPR2025-00480, Paper 11 at 2. Thus, petitioner Home Depot—"the proprietor of a chain of hardware stores"—"did not have reason to anticipate assertion of the patent against it." *Id.* at 3. Here, like *Home Depot*, these considerations "weigh in favor Petitioner's expectations." *Id.* And PO's settled expectations should be given no weight—PO has none in the medical device space.

D. Domestic Investment Confirms Institution Is Appropriate

Institution would protect Resmed's substantial and expanding investment in U.S. manufacturing. Recognizing that "the availability of IPRs and PGRs is important to protect American manufacturers," the Director's March 11, 2026 Memorandum set forth additional considerations related to U.S. manufacturing in determining whether to institute post-grant proceedings. March 11 Memorandum at

2. The Director considers "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." *Id*. Both favor institution. In the Parallel Litigation, PO accuses Resmed sleep and respiratory care devices, Resmed AirSense 10 products, the Resmed AirCurve 10 products, the Resmed Connectivity Module products, the Resmed AirSense 11 products, and the Resmed AirCurve 11 products, that are rooted in Resmed's U.S. footprint and tied to its ongoing domestic manufacturing expansion. Wheatley Decl. ¶¶ 1-5; Ex. 1034, ¶ 15.

The record confirms domestic investments tied directly to the accused AirSense line. Resmed is in the initial phases of [redacted] Wheatley Decl. ¶ 2. [redacted] *Id.* ¶ 3. [redacted] *Id.* ¶¶ 3–4. [redacted]

[redacted] *Id.* ¶ 5. Resmed also maintains several U.S. commercial facilities and nationwide distribution operations. *Id.* ¶ 1.

PO offers nothing comparable. PO is a company based in Barcelona, Spain specializing in advanced antenna technologies that monetizes its technologies through licensing rather than through manufacturing. *E.g.*, Ex. 1034 ¶¶ 1, 12; Ex. 2006 at 1-2. Although PO claims to have licensed its antenna technology to numerous companies, notably absent from that list is any company in the medical device space. *See* Ex. 2006; *see also* Ex. 2007, Ex. 2008. There is accordingly no evidence that "products made, sold, or licensed by the patent owner [] compete with the accused products," let alone that any such product is manufactured in the United States. 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.

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

PO's request for discretionary denial only confirms that institution is appropriate. This is the first and only post-grant challenge to the '960 Patent—a challenge made within three and a half years after the date PO first indicated that it

might ignore the field of technology of the challenged patent and enforce the patent in the medical device space. Thus, the parties' expectations, PO's domestic licensing solely in other technology spaces, and the significant cost of Resmed's shift to U.S. manufacturing weighs against (not in favor) of discretionary denial.[2]

A. Neither Age Nor Pre-Suit Correspondence Create Settled Expectations When PO Refused To Engage

Although PO relies heavily on the purported six-year from issuance age guideline, age from issuance is not dispositive especially where as here the Office materially erred during prosecution. See § III.A.3 (citing *Skullcandy* and *Xencor*). Moreover, PO had never previously enforced this handset patent (or any patent) in the medical device space (*see* § III.C), and whatever reliance PO claims from the patent's age is outweighed by the need to cure the material errors that led to issuance of the challenged claims (*see* § III.A).

PO further argues that it had settled expectations by providing "clear notice

[2] PO also asserts that "the invalidity challenges in the Petition are weak, favoring discretionary denial" but merely references its anticipated POPR. This bare, conclusory assertion is entitled to no weight, and regardless, the Petition identifies prior art that expressly discloses the very feature on which allowance was based. *See* § III.A.

of the '960 Patent and Petitioner's infringement." DDR, 7. Not so. *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. Ex. 2002, 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 "[an] affirmative communication of a *specific* charge of infringement by a *specific* accused product or device").[3]

Second, 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. Ex. 2004, 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."). Indeed, at the time "ResMed [was] respond[ing] to [the 'humanitarian emergency' over demand for CPAP" and other respiratory devices caused by COVID-19. Ex. 1039.

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[3] PO notes it identified a specific product in November 2022. DDR, 7. 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." Ex. 2004, 5-6.

Third, Resmed expected enforcement (if any) against its antenna supplier Taoglas (not itself), given Fractus's litigation history against antenna manufacturers. Specifically, Resmed notified Fractus that Taoglas "possess[es] the relevant technical information" and that any discussions would need to involve them. Ex. 2004, 3. Indeed, Taoglas repeatedly requested that Fractus provide claim charts "in order to assist our customer Resmed answer you in a meaningful way." Ex. 2004, 1.

Fourth, although PO asserts that Resmed "declined to engage in confidential settlement discussions" (DDR, 7), it was PO who refused to engage. Both Resmed and Taoglas 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.,* Ex. 2004, 5-6. PO failed to provide such information, and thus, PO could not have settled expectations. To the contrary, Resmed 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 owner gave "notice" of the patent to petitioner with no express infringement allegation. *Jesco Lighting Grp., LLC v. 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).

Ultimately, PO never enforced its patents in the medical device space, and PO's refusal to provide its infringement allegations coupled with its years of silence merely confirmed Resmed's expectation that PO would not enter this space.

B. PO's Recent Domestic Licensing Is Entitled To No Weight

PO claims "substantial domestic licensing of the '960 Patent favors discretionary denial." DDR, 8. Quite the opposite—PO's licensing history confirms exactly why PO had no settled expectations. As a threshold, PO never previously asserted the '960 Patent. In fact, PO concedes in a footnote that the '960 patent "was not challenged in the Vivint IPRs or asserted in the ADT litigation" and was merely "included in the license agreements." DDR, 8 n.1. None of the cited press releases mentions the '960 Patent, and PO identifies no license negotiated because of it. *See* § III.C. Portfolio inclusion is not patent-specific reliance, particularly here where there is no indication that the '960 Patent drove the licenses.

PO argues that its "licensing of the '960 patent is analogous to that of *Alliance Laundry*." DDR, 9. But 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 Alliance Laundry Sys., LLC v. PayRange LLC*, IPR2025-00950, Paper 11 at 3 (Sept. 19, 2025) (informative). Critically, patent 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." IPR2025-00950, Paper 6 at 2-3 (July 28, 2025). In stark contrast, PO has never commercialized, asserted, marked, licensed or otherwise applied the '960 Patent (or any other patent) in the medical device space. In fact, PO's litigation assertions have been limited to antenna manufacturers, handset manufacturers, cellular carriers, wireless infrastructure providers, smart security systems, and location-based services. And noticeably absent from PO's list of licensees is any company in the medical device space.

C. PO's Attempt To Discount Resmed's U.S. Investment Fails

PO argues that domestic manufacturing does not favor institution. DDR, 9. Nonsense. *First,* PO asserts Resmed's AirSense 10 product is manufactured in Singapore. But as PO is well-aware from an instituted proceeding on another Fractus patent, [redacted]. *Resmed Corp. v. Fractus, S.A.*, IPR2026-00191, Paper 16 (April 21, 2026); Wheatley Decl. ¶ 3. If anything, Resmed's commitment

to expand manufacturing in the U.S. confirms the significance of Resmed's investment—one that should be protected.

Second, PO asserts that Resmed's antenna supplier Taoglas "does not manufacture devices in the United States." DDR, 10. But Taoglas "is now U.S. owned." Ex. 1038, 6. Importantly, Taoglas is "committed to continuing the advancement of [its] San Diego, California H.Q. for 'Made in America' manufacturing, including Buy America Compliance and Trade Agreement Act Compliance." *Id.*

Third, PO is tellingly silent about its own domestic manufacturing and investment, confirming that there are no "products made, sold, or licensed by the patent owner that compete with the accused products." March 11 Memorandum at 2. The Director should not "give a tactical advantage to companies [like PO] that neither manufacture in the United States, nor are making American manufacturing investment." *Id.*

At bottom, Resmed has already [redacted], including domestic manufacture of the accused products, whereas PO has invested nothing. Thus, U.S. manufacturing considerations confirm institution is appropriate.

V. CONCLUSION

For these reasons, the Director should decline discretionary denial to promote and protect American manufacturing and ensure efficiency and consistency.

Dated : October 1, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2026, a true and correct copy of the foregoing **PETITIONER'S CORRECTED OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** is being served by electronic mail on PO's counsel of record listed below, pursuant to its Mandatory Notices.

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