

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED LIMITED, RESMED, INC., and RESMED CORP.,
Petitioners,

v.

FISHER & PAYKEL HEALTHCARE LIMITED,
Patent Owner.

Case IPR2016-01716 (Patent 8,550,072)

Case IPR2016-01717 (Patent 8,550,072)

Case IPR2016-01719 (Patent 6,398,197)

Case IPR2016-01725 (Patent 7,111,624)

Case IPR2016-01727 (Patent 7,111,624)

Case IPR2016-01729 (Patent 8,091,547)

Case IPR2016-01730 (Patent 8,091,547)

Case IPR2016-01731 (Patent 8,091,547)

Record of Oral Hearing
Held: December 6, 2017

Before HYUN J. JUNG, CARL M. DEFRANCO, and MICHAEL L.
WOODS, *Administrative Patent Judges*.

IPR2016-01716, 01717 (Patent 8,550,072)
IPR2016-01719 (Patent 6,398,197)
IPR2016-01725, 01727 (Patent 7,111,624)
IPR2016-01729, 01730, 01731 (Patent 8,091,547)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matters came on for hearing on Wednesday, December 6, 2017 at 10 a.m., at the U.S. Patent and Trademark Office, Madison Building East, 600 Dulany Street, Alexandria, Virginia, before Walter Murphy, Notary Public.

IPR2016-01716, 01717 (Patent 8,550,072)
IPR2016-01719 (Patent 6,398,197)
IPR2016-01725, 01727 (Patent 7,111,624)
IPR2016-01729, 01730, 01731 (Patent 8,091,547)

PROCEEDINGS

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2 JUDGE JUNG: Good morning. Please be seated. This is the oral
3 hearing for cases IPR's 2016-1716, 1717, 1719, 1725, 1727, and 1729
4 through 1731 between Petitioners ResMed Limited, ResMed, Incorporated,
5 ResMed Corporation and Patent Owner Fisher & Paykel Healthcare Limited.

6 To specify for the record in the 1716 and 1717 cases, Petitioners
7 challenge claims in U.S. Patent No. 8,550,072. In the 1719 case Petitioners
8 challenge claims in U.S. Patent No. 6,398,197. In the 1725 and the 1727
9 cases, Petitioner challenges claims in U.S. Patent No. 7,111,624, and in the
10 final 1729, 1730 and 1731 cases Petitioners challenge claims in U.S. Patent
11 No. 8,091,547.

12 Starting with counsel for Petitioners followed by counsel for Patent
13 Owner, please stand at the podium and state your names for the record.

14 MR. SCHERKENBACH: Good morning, Your Honors. Frank
15 Scherkenbach of Fish & Richardson for the Petitioner, ResMed. I'd like to
16 introduce the people who will be helping me today. Andrew Dommer sitting
17 with me at counsel table, Mike Hawkins is here, he's the lead counsel on
18 these proceedings -- thank for letting me up here pro hac -- and then from
19 the client, ResMed, we have Mike Rider, General Counsel, Americas, and
20 Paul Green, Special Counsel for Intellectual Property.

21 JUDGE JUNG: Welcome.

22 MR. JENNINGS: Good morning, Your Honors. Joe Jennings of
23 Knobbe Martens for the Patent Owner, Fisher & Paykel Healthcare. I'll be

IPR2016-01716, 01717 (Patent 8,550,072)
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1 presenting today together with my colleague also from Knobbe Martens,
2 Matt Bellinger and also joining me today are my colleagues from Knobbe
3 Martens Rob Roby, Jarom Kesler, and from Fisher & Paykel, Jon Harwood.

4 JUDGE JUNG: Welcome to you as well. As stated in the Trial
5 Hearing Order, each party has 75 minutes of total time to present positions
6 in all these cases. Petitioners will proceed first followed by Patent Owner
7 and Petitioners may reserve rebuttal time, and as requested in our Trial
8 Hearing Order we asked the parties to confer and agree on an order of
9 presentation of these cases. Mr. Scherkenbach, have the parties conferred
10 and agreed to an order of the presentation of these cases?

11 MR. SCHERKENBACH: We haven't explicitly done that except to
12 say that we each have a set of slides, but we're the treating the three slide-on
13 cases together --

14 JUDGE JUNG: Okay.

15 MR. SCHERKENBACH: -- and we're treating the '197 separately.

16 JUDGE JUNG: All right.

17 MR. SCHERKENBACH: But we've exchanged the slides and we
18 understand the order they're presenting. We're going to take it in reverse
19 here and address the last patent they address first in our presentation to rebut
20 those and then deal with the slide-on patents.

21 JUDGE JUNG: Okay. Thank you, gentlemen. And just to be clear
22 all the cases will be presented at once --

23 MR.SCHERKENBACH: Yes.

IPR2016-01716, 01717 (Patent 8,550,072)
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1 JUDGE JUNG: -- (indiscernible) order. Thank you. And one more
2 housekeeping item, Mr. Jennings. In the 1729 case, Exhibit 2007 is
3 supposed to be a statutory disclaimer. It's actually a notice and the statutory
4 disclaimer isn't filed in the case. I need you to file the actual statutory
5 disclaimer for the 1729 case.

6 MR. JENNINGS: We will do that, Your Honor.

7 JUDGE JUNG: All right. Thank you, Mr. Jennings. All that said,
8 Mr. Scherkenbach you may proceed when you're ready.

9 MR. SCHERKENBACH: Thank you, Your Honor. I understand the
10 Board has our slides. I will endeavor for the benefit of Judge Woods to
11 identify the slide numbers as I go through them. As I indicated, we'd like to
12 start with the three --

13 JUDGE JUNG: Oh, Mr. Scherkenbach, before you continue, how
14 much time would you like?

15 MR. SCHERKENBACH: Oh, rebuttal. I'm sorry. Fifteen minutes,
16 please, for rebuttal.

17 JUDGE JUNG: So I'm going to be addressing what we call the three
18 slide-on patents first, the '624, the '547, the '072, and turning to my slide 2 I
19 wanted to start up front with two sort of basic principles. Obviously this is
20 an obviousness challenge at least now, and there are two principles I think
21 we're going to hear a lot throughout the proceedings. One is what's the
22 person of ordinary skill in the art and how skilled is this person?

23 There's substantial agreement really between the parties on what that
24 level of skill is, as shown here on slide 2. This is Mr. Virr's articulation of

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