

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

FISHER & PAYKEL HEALTHCARE LIMITED,  
Patent Owner.

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Case IPR2016-01730  
Patent 8,091,547 B2

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

JUNG, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

ResMed Limited, ResMed Inc., and ResMed Corp. (“Petitioners”) filed a Petition (Paper 4, “Pet.”), requesting institution of an *inter partes* review of claims 1, 11–14, 24, and 25 of U.S. Patent No. 8,091,547 B2 (Ex. 1003, “the ’547 patent”). Fisher & Paykel Healthcare Limited (“Patent Owner”) filed a Preliminary Response (Paper 9). Upon considering the Petition and the Preliminary Response, we instituted *inter partes* review of claims 1, 11–14, 24, and 25 of the ’547 patent. Paper 10 (“Dec. on Inst.”).

After institution, Patent Owner filed a Response (Paper 13, “PO Resp.”) and a statutory disclaimer of claims 24 and 25 (Paper 23; Ex. 2006). Petitioners filed a Reply (Paper 16, “Pet. Reply”). Petitioners proffered a Declaration of Alexander Virr (Ex. 1012, “Virr Declaration” or “Virr Decl.”) with their Petition and a Second Declaration of Alexander Virr (Ex. 1034, “Second Virr Declaration” or “2d Virr Decl.”) with their Reply. Patent Owner proffered a Declaration of Hartmut Schneider, M.D., Ph.D. (Ex. 2004, “Schneider Declaration” or “Schneider Decl.”) with its Response. A deposition transcript for Dr. Schneider (Ex. 1035) was filed.

An oral hearing in this proceeding and Cases IPR2016-01716, IPR2016-01717, IPR2016-01719, IPR2016-01725, IPR2016-01727, IPR2016-01729, and IPR2016-01731 was held on December 6, 2017; a transcript of the hearing is included in the record (Paper 28, “Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioners have shown by a preponderance of the evidence that claims 1 and 11–14 of the ’547 patent are unpatentable.

*A. Ground of Unpatentability at Issue*

We instituted *inter partes* review on the ground that, under 35 U.S.C. § 103, claims 1, 11–14, 24, and 25 are unpatentable over the HC200 Manual<sup>1</sup> and Netzer<sup>2</sup>. Dec. on Inst. 2, 17, 18.

*B. Related Proceedings*

The parties indicate that the '547 patent is at issue in *Fisher & Paykel Healthcare Ltd. v. ResMed Corp.*, 3:16-cv-02068-GPC-WVG (S.D. Cal.). Pet. 2; Paper 6, 1–2; Ex. 1029; Ex. 3001 (order granting motion to stay pending resolution of *inter partes* review).

The parties also indicate that the '547 patent was the subject of two cases that were dismissed without prejudice: *ResMed Inc. v. Fisher & Paykel Healthcare Corp. Ltd.*, 3:16-cv-02072-JAH-MDD (S.D. Cal.) and *Fisher & Paykel Healthcare Ltd. v. ResMed Corp.*, 3:16-cv-06099-R-AJW (C.D. Cal.). Pet. 2; Paper 6, 1; Exs. 1030–1033.

The '547 patent is also the subject of Cases IPR2016-01729 and IPR2016-01731. Pet. 3. The '547 patent issued from a division of an application, that became U.S. Patent No. 7,111,624 (Ex. 1001), which is at issue in Cases IPR2016-01725 and IPR2016-01727. Ex. 1003 (60); Pet. 3. Another related patent is at issue in Cases IPR2016-01716 and IPR2016-01717. Pet. 3.

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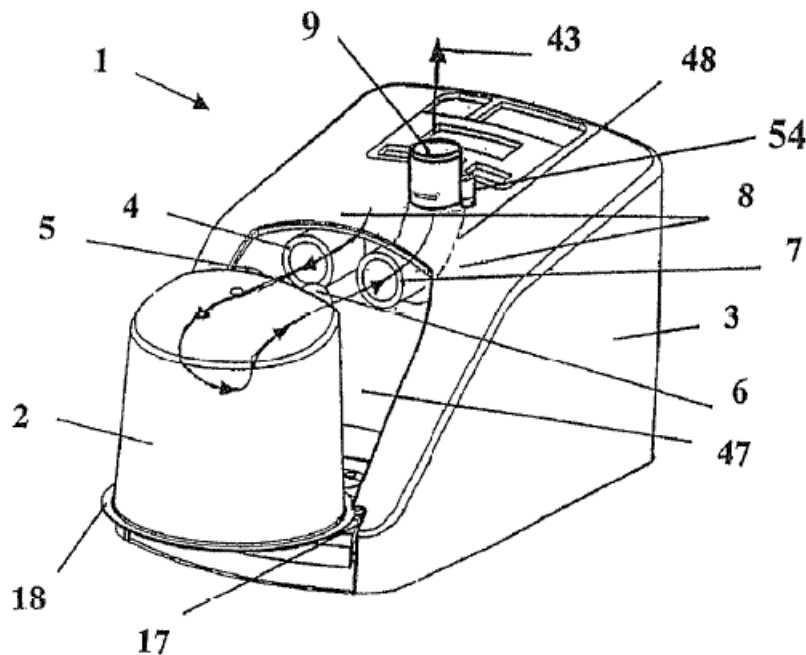
<sup>1</sup> *HC200 Series Nasal CPAP Blower & Heated Humidifier User's Manual*, (Fisher & Paykel Healthcare, Rev A May 1998) (Ex. 1017); *see also* Pet. 13–14 (citing Ex. 1003, 1:26–44, Exs. 1023–26 as evidence to support that the HC200 Manual is § 102(b) prior art).

<sup>2</sup> WO 98/04311, published Feb. 5, 1998 (Ex. 1007). Exhibit 1008 is a certified English translation of Netzer, and citations to Netzer in this Decision are to Exhibit 1008.

*C. The '547 Patent (Ex. 1003)*

The '547 patent issued January 10, 2012, from an application filed July 5, 2006, and is a division of an application filed September 18, 2002, which is a continuation-in-part of an application filed on March 14, 2001. Ex. 1003, (22), (45), (60), 1:7–12; Pet. 11–12. The '547 patent also claims priority to a New Zealand application filed on March 21, 2000. Ex. 1003, (30).

The '547 patent relates to “a humidifier arrangement for use in stand alone humidifiers.” Ex. 1003, 1:18–24. The '547 patent states that humidifier chambers are “now used in compact and portable ventilation machines, for example machines intended for the home treatment of obstructive sleep apnea (CPAP machines).” *Id.* at 1:34–37. Figure 1 of the '547 patent is reproduced below:



**Figure 1**

Figure 1 is a perspective view of a water chamber and CPAP machine. *Id.* at 3:36–37. CPAP machine 1 has water chamber 2 that includes gases

inlet port 5 and gases outlet port 6. *Id.* at 3:36–41, 4:17–20. CPAP machine 1 also includes chamber receiving bay 47 that receives water chamber 2, connection manifold 8 that connects with gases inlet port 5 and gases outlet port 6, and a heater base in bay 47 that heats water in chamber 2. *Id.* at 4:23–26, 4:29–30. Connection manifold 8 has a passage which receives airflow from a blower and directs it into water chamber 2 and a passage that directs airflow from gases outlet port 6 to CPAP patient outlet port 9. *Id.* at 4:57–61. CPAP machine 1 also has slot 17 that co-operates with flange 18 at the base of water chamber 2 and securing latch 19 (shown in Figure 2) that prevents removal of water chamber 2 when engaged with CPAP machine 1. *Id.* at 4:29–37.

In use, air from the blower exits through manifold outlet port 4, enters water chamber 2 through gases inlet port 5, is humidified by water evaporating in water chamber 2, leaves water chamber 2 through gases outlet port 6, enters manifold inlet port 7, and is directed to outlet port 9. *Id.* at 5:1–10.

An advantage obtained from the breathing conduit connection 9 being located on the body of the CPAP machine and not connected to the top of the water chamber directly, is that complete connection or disconnection of the water chamber from the CPAP system can be achieved with a single slide-on or slide-off motion.

*Id.* at 5:10–15.

#### *D. Illustrative Claim*

The '547 patent has 25 claims, of which Petitioners challenge claims 1, 11–14, 24, and 25. Patent Owner filed a statutory disclaimer for claims 24 and 25. Paper 23; Ex. 2006. Claim 1, reproduced below, is the only independent claim at issue.

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