

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED PTY LTD., RESMED CORP. AND
RESMED INC.,
Petitioners

v.

FISHER & PAYKEL HEALTHCARE LIMITED,
Patent Owner

Case IPR2019-000173

U.S. Patent No. 9,974,914
Issue Date: May 22, 2018
Title: Breathing Assistance Apparatus

**PETITIONERS' BRIEF ON BRI CLAIM CONSTRUCTION
AS ORDERED BY THE BOARD**

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United States Patent and Trademark Office
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I. INTRODUCTION

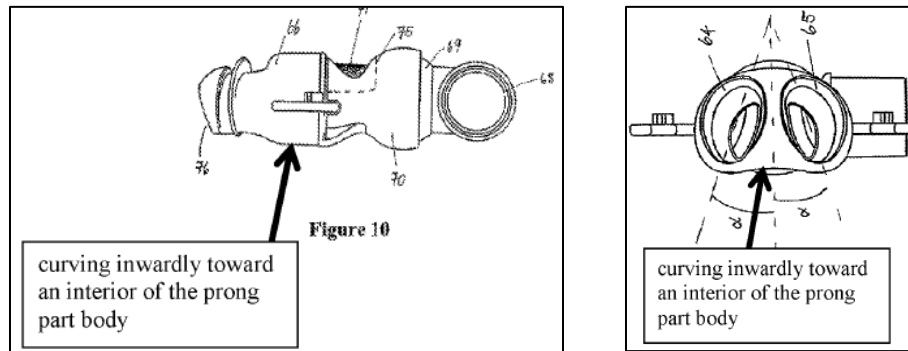
Pursuant to the Board’s April 4, 2019 Order, ResMed Pty. Ltd., ResMed Corp., and ResMed, Inc. (collectively, “Petitioners”) submit this brief on the broadest reasonable interpretation (“BRI”¹) of “curving inwardly toward an interior of the prong part body” and “curving inward toward an interior of the body part,” in claims 1 and 9, and claims 1 and 11, respectively, of the ’914 patent.

II. BRI OF “CURVING INWARDLY TOWARD AN INTERIOR OF THE PRONG PART BODY” / “CURVING INWARD TOWARD AN INTERIOR OF THE BODY PART” FROM INTRINSIC RECORD

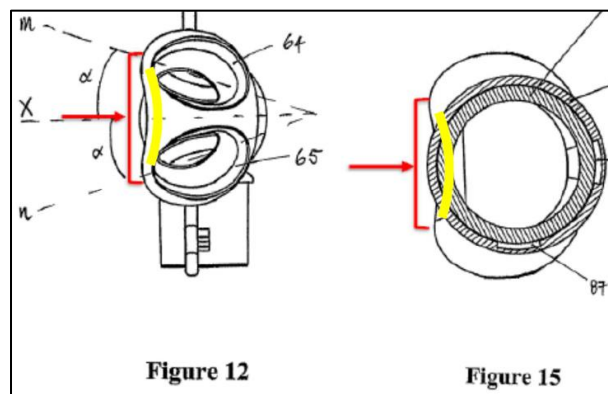
The ’914 patent delivers pressurized air to patients through “three main components: a prong part 61, body part 62 and ball jointed connector 63.” Ex. 1001, 7:1-2. Figure 11 illustrates how the flexible prong part 61 is pushed onto a so-called “extension 67” of rigid body part 62 to create a friction fit. The Petition notes, at Sections IV.B and IV.C, that the text of the ’914 patent never mentions the claimed inwardly curved surfaces. During prosecution, the Patent Owner annotated Figures 10 and 12 to identify the prong part’s inward curvature. Petitioners’ claim construction briefing at the ITC annotated Figures 12 and 15 to show the surface curving inwardly toward an interior of the prong part body (Fig. 12, far below, left) and the surface curving inward toward an interior of the body

¹ This *Inter Partes* review was filed under the Office’s BRI standard.

part (Fig. 15, far below, right):



RMD1001, FIG. 11; Petition, 10 (citing Ex. 1002, 73 (Applicant’s annotations)).



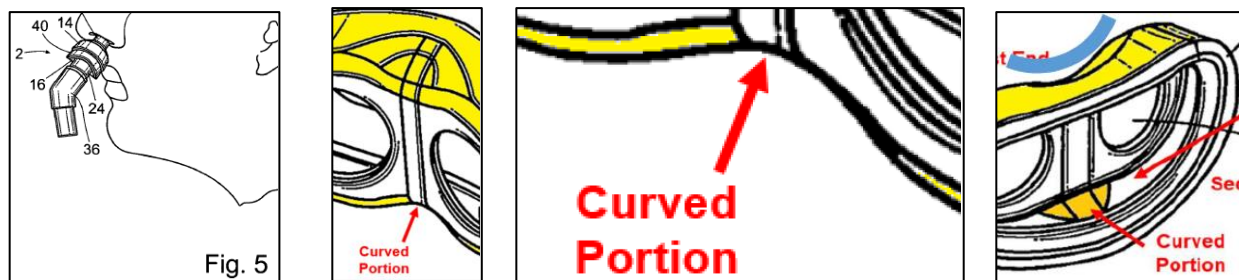
RMD1018, 31 (Petitioners’ annotations from ITC brief; yellow curves added).

In Figs. 12 and 15, the center of each curved surface (where the red arrows point, above) is closest to the interior space of the respective part. That is the construction Petitioners advanced at the ITC: “inwardly bowed surface such that its center is closest to the middle of the prong part body’s ([or] the body part’s) interior.” Ex. 1018, 30. The BRI would be slightly less stringent so Petitioners propose: “*having some inward curvature such that its center is close to the middle of the prong part body’s (or body part’s) interior.*”

III. THE PRIOR ART DISCLOSES THE CLAIMED SURFACES

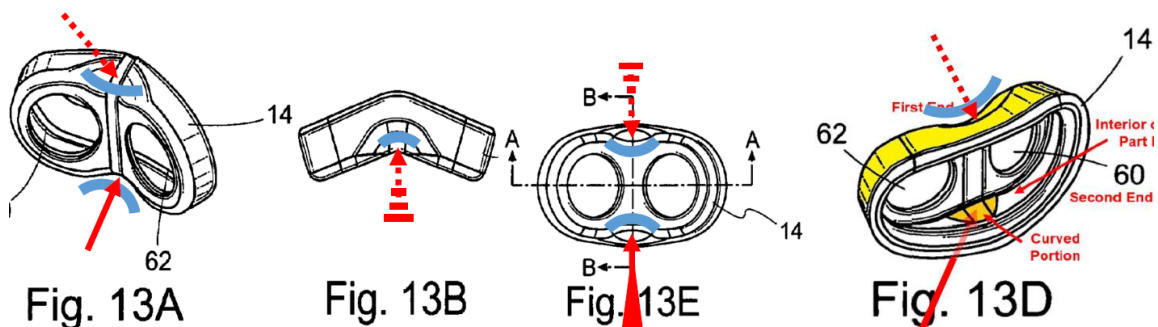
The Board's Order asks Petitioners to "address whether the construction advanced in their brief is consistent with their prior art contentions, as set forth in the Petition..." Paper 11, 4. It is entirely consistent, and the prior art even meets the Phillips construction proposed at the ITC, as explained below.

For claims 9 and 11, the Petition cites, *inter alia*, Thomlinson's Figures 10B, 13A, 13B, 13D and 13E for the inwardly curved portion of the prong part body. Petition, 20-21. Thomlinson's prong part body's (proximal portion 14) exterior surface bows inwardly for comfort around the user's upper lip/moustache area (Ex. 1010, Fig. 5; Petition, 21). That surface's inward curvature is clear, and magnified versions of the Petition's annotations, below, leave no doubt that the exterior surface facing the user curves inwardly toward the interior. The right-most excerpt below identified the interior of the portion whose *exterior* meets the claim language; its blue annotation is explained below:



(Pet., 21.) Thomlinson's prong part 14 is clearly symmetrical with inwardly curved exteriors on its top and bottom, so views of the top curve in the figures

cited in the Petition prove the bottom user-facing surface in Figs. 10B, 13D, etc., is similarly bowed such that its center is closest to the middle of the prong part body's interior (red arrows below show direction of inward (blue) curvature of the lower user-facing side; dotted arrows are for the symmetrical top curvature).



Turning to the mask body's inwardly curved portion in claim [11.3], Thomlinson's body part 16's receiving lip 132 circumscribes the part and therefore exists on a side facing a user's face in use (*ref.* Fig. 5, above). The lip's exterior defines an inwardly bowed channel surface (*see* Pet., 36-37, with added red arrow and blue curve, below left and middle (Figs. 17G and 17F, respectively)) such that its center is closest to the middle of the body part's interior. The Petition, at 37-38, also relied on a second portion of Thomlinson's body part, in red below right (Fig. 17F), that needs no elaboration; it faces the user in use, and bows inwardly such that its center is closest to the middle of the body part's interior:



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