Filed: April 10, 2019

Filed on behalf of:

Fisher & Paykel Healthcare Limited

By: Douglas G. Muehlhauser

Jon W. Gurka

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main Street, 14th Floor

Irvine, CA 92614

Tel.: (949) 760-0404 Fax: (949) 760-9502

Email: BoxFPH892-4@knobbe.com

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 No. IPR2019-00178 U.S. Patent No. 9,974,914

PATENT OWNER FISHER & PAYKEL HEALTHCARE LTD.'S PRELIMINARY RESPONSE



TABLE OF CONTENTS

Page No.

I.	INT	RODUCTION	1			
II.	BACKGROUND					
	A.	Overview Of The '914 Patent				
		1. The '914 Patent Specification	2			
		2. The Claims	3			
	B.	Overview Of Petitioner's References				
		1. Sleeper	4			
		2. Wood	8			
	C.	Claim Construction				
	D.	Level Of Skill In The Art				
	Ε.	Petitioner's Asserted Grounds				
	F.	Relationship To IPR 2019-00177				
III.	ARGUMENT					
	A.	Legal Standard	13			
		1. Threshold For Institution	13			
		2. Obviousness Combinations	14			
	В.	The Petition Fails To Demonstrate That All Limitations In Claim 9 Are Found In The References, And The Board Should Deny The Petition				
		Petitioner Fails To Show Nasal Prongs Adjacent A Curved User-Side Portion	16			



TABLE OF CONTENTS (cont'd)

Page No.

		2.			alls 10 Show A Nasal Cannula Or nfigured To Supply Humidified Gases	21
	C.	The P	etitior	ı's Rel	iance On Combined References Fails	22
		1.	Prong	gs Disp	ls To Disclose First Sides Of The Two posed Further Apart Than The Second ne Two Prongs	23
		2.			Motivation To Combine Is d By The Record	24
			a.	untet	on 1 (improved patient comfort) is hered to Wood's oval-shaped nasal ures	25
			b.	Woo	on 2 (better seal) is untethered to d's oval-shaped apertures and disclosed eeper	27
			c.		on 3 (known technique to a known ratus) is unsupported by the evidence	28
				i.	Sleeper and Wood provide distinct and dissimilar mask designs	29
				ii.	Petitioner's combination would remove a key feature from Sleeper for a redundant function	31
IV.	CON	CLUS	ION			33



TABLE OF AUTHORITIES

Page No(s).

Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd., 821 F.3d 1359 (Fed. Cir. 2016)24
Kinetic Concepts, Inc. v. Smith & Nephew, Inc., 688 F.3d 1342 (Fed. Cir. 2012)
KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007)
MBC Medical Co. et al. v. ResMed Ltd., IPR 2014-01363, Paper 7 at 7 (P.T.A.B. Jan. 21, 2015)21
MBC Medical Co. et al. v. ResMed Ltd., IPR 2014-01363, 2016 WL 287090 (P.T.A.B. Jan. 20, 2016)21
Microsoft Corp. v. Proxyconn, Inc., 789 F.3d 1292 (Fed. Cir. 2015)
<i>In re Nuvasive, Inc.</i> , 842 F.3d 1376 (Fed. Cir. 2016)
<i>In re Ratti</i> , 270 F.2d 810 (C.C.P.A. 1959)
ResMed Ltd. v. Fisher & Paykel Healthcare Ltd., IPR2019-00172, Paper 11 (P.T.A.B. April 4, 2019)1
South-Tek Sys., LLC v. Engineered Corrosion Sols., LLC, No. 2017-2297, 2018 WL 4520013 (Fed. Cir. Sept. 20, 2018)28, 31, 32
OTHER AUTHORITIES
35 U.S.C. § 314
37 C.F.R. § 42.10814
M.P.E.P. § 2143.01



EXHIBIT LIST

Exhibit No.	Description
FPH2001	Declaration of Patrick W. Truitt, Jr.
FPH2002	Curriculum Vitae of Patrick W. Truitt Jr.
FPH2003	The New Oxford American Dictionary
FPH2004	The American Heritage Dictionary



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

