

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RESMED LIMITED, RESMED INC. AND RESMED CORP.,
Petitioner,

v.

FISHER & PAYKEL HEALTHCARE LIMITED,
Patent Owner.

Case IPR2019-00179
Patent 9,333,315 B2

Before THOMAS L. GIANNETTI, JAMES J. MAYBERRY,
AMANDA F. WIEKER, *Administrative Patent Judges.*

MAYBERRY, *Administrative Patent Judge.*

DECISION

Denying Institution of Inter Partes Review
35 U.S.C. § 314

I. INTRODUCTION

Petitioner, ResMed Limited, ResMed Inc., and ResMed Corp. (“ResMed”), filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–19 (the “Challenged Claims”) of U.S. Patent No. 9,333,315 B2 (Ex. 1003, the “’315 patent”). Pet. 1. Patent Owner, Fisher & Paykel Healthcare Limited (“Fisher”), filed a Preliminary Response (“Prelim. Resp.”) to the Petition. Paper 11. We have jurisdiction under 35 U.S.C. § 314. *See also* 37 C.F.R. § 42.4(a) (permitting the Board to render institution decisions on behalf of the Director).

To institute an *inter partes* review, we must determine that the information presented in the Petition shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, upon considering the present record, we determine that ResMed has not established a reasonable likelihood that it would prevail with respect to at least one of the Challenged Claims. Accordingly, we deny the Petition.

A. Related Matters

The parties indicate that the ’315 patent has been asserted at the International Trade Commission. *See* Pet. 1. The procedural history at the International Trade Commission is not relevant to our analysis here.

The parties also state that related patents are asserted in *Fisher & Paykel Healthcare Ltd. v. ResMed Corp.*, Case No. 3:16-cv-02068-GPC-WVG (S.D. Cal.). Pet. 1; Paper 5, 1.

B. The ’315 Patent

The ’315 patent, titled “Breathing Assistance Apparatus,” issued May 10, 2016 from an application filed September 4, 2015. Ex. 1003, [54],

[45], [22]. The application that matured into the '315 patent claims priority to a foreign application filed February 23, 2004. *Id.* at [30]. The '315 patent relates “to apparatuses for treating sleep [apnea].” *Id.* at 1:15–16. Figure 9 of the '315 patent is reproduced below.

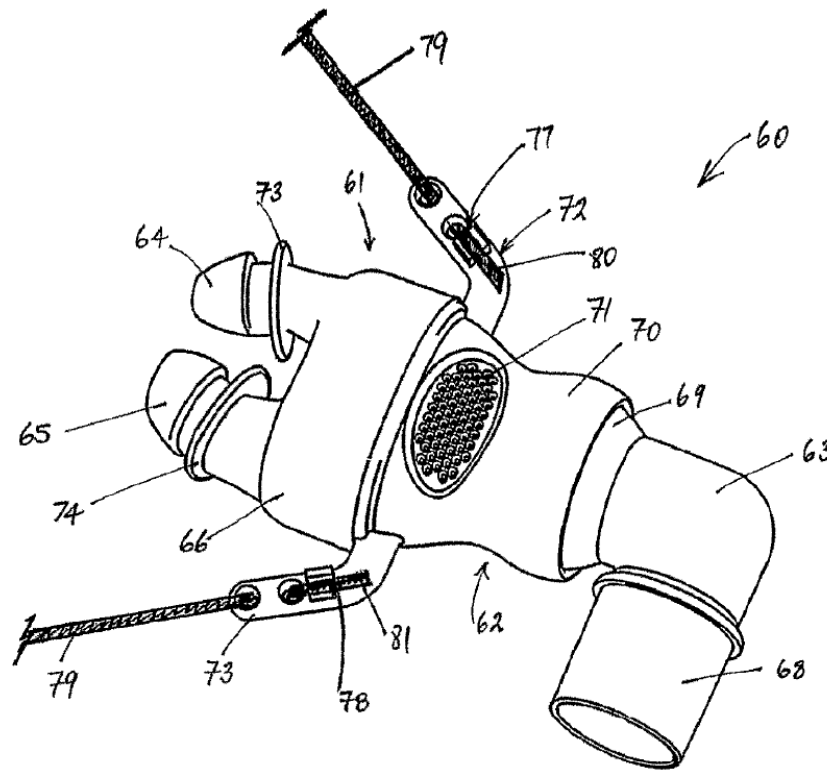


Figure 9

Figure 9 “is a perspective view of a fourth embodiment of a nasal cannula.” *Id.* at 3:30–31. Nasal cannula 60 includes three main components: prong part 61, body part 62, and ball jointed connector 63. *Id.* at 6:48–51.

Prong part 61 has two nasal prongs 64 and 65 shaped for placement inside a user’s nares. Ex. 1003, 6:52–54. Prongs 64 and 65 are substantially oval tubular members that allow for a passage of gases and are integrally molded with tubular body 66 in a flexible material such as rubber or thermoplastic elastomers. *Id.* at 6:59–64. Each of prongs 64 and 65 has a

flange (flanges 73 and 74, respectively) disposed about its circumference at a position on the prong such that each of the flanges rests against the outside of each of the patient's nares. *Id.* at 7:12–15.

Body part 62 is a tubular passageway in which prong part 61 is connected at one end. Ex. 1003, 7:29–31. Ball joint 69 extends from connector 63 and slots into a complementary shaped (partial sphere) socket end 70 on body part 62. *Id.* at 7:31–33. Body part 62 has headgear extensions 72 and 73¹ that extend out from body part 70. *Id.* at 8:31–33. Extensions 72 and 73 include channels 77 and 78, respectively, formed in the extensions, that are capable of receiving ends 80 and 81 of headgear strap 79. *Id.* at 8:33–35. Strap ends 80 and 81 in use are threaded through apertures (preferably two) and extend into and are held in channels 77 and 78. *Id.* at 8:35–37.

Figures 10 and 11 of the '315 patent are reproduced below.

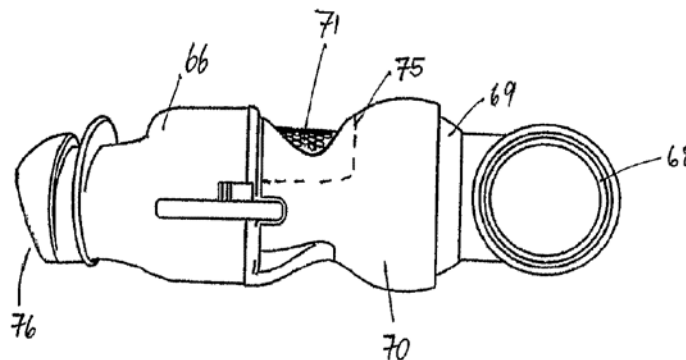


Figure 10

¹ Figure 9 of the '315 patent and the corresponding description in the text uses reference numeral 73 to refer to two distinct structures: (1) flange 73 and (2) headgear extension 73.

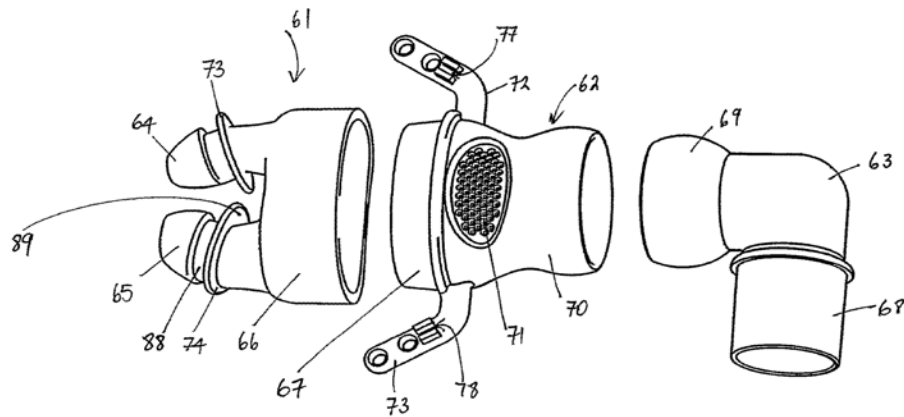


Figure 11

Figure 10 depicts “a side view of the nasal cannula of F[igure] 9” and Figure 11 depicts “an exploded perspective view of the nasal cannula of F[igure] 9.” Ex. 1003, 3:32–34. As best seen in Figure 11 of the ’315 patent, each headgear extension has a dogleg shape and is attached to body part 62 at opposite sides where body 66 of prong part 61 interfaces body part 62, that is, on a distal side of the prong part. As seen in Figure 10, each headgear extension is attached near the horizontal centerline (not shown) of body 62.

C. Challenged Claims

Of the Challenged Claims, claims 1, 6, and 17 are independent claims.

Claim 17 is reproduced below.

17. A mask assembly for delivering positive airway pressure to a user, the mask comprising:
- a rigid mask body;
 - an inspiratory conduit connected to the rigid mask body;
 - a prong part comprising a hollow body and first and second nasal prongs extending from the hollow body, the hollow body removably connected to the mask body;
 - a first headgear extension having a distal end connected to the rigid mask body on a distal side of the prong part at a location spaced from a user in use, and a proximal end disposed

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.