Filed: September 22, 2017

Filed on behalf of:
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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. IPR2016-01719
U.S. Patent No. 6,398,197

PATENT OWNER'S OBJECTIONS TO EVIDENCE SERVED WITH REPLY

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Fisher & Paykel Healthcare Limited ("FPH") objects to the admissibility of evidence served with Petitioners' Reply to Patent Owner's Response on September 15, 2017 (Paper No. 17).

Evidence	**Objections**
Ex. 1026 Second Declaration of Alexander Virr ¶¶ 15-17, 32-34	37 C.F.R. § 42.23/77 Fed. Reg. at 48,767 ¶ I: Petitioners improperly rely on portions of Exhibit 1026 in their Reply. As relied on in the Reply, portions of the exhibit include new evidence that cannot properly be raised in Petitioners' Reply, at least because the portions include new evidence that should have been included in the Petition as part of Petitioners' alleged *prima facie* case of unpatentability. For example, the cited portions of the exhibit and corresponding portions of Petitioners' Reply present new theories and arguments that U.S. Patent No. 5,953,763 to Gouget is allegedly analogous art to FPH's challenged U.S. Patent No. 6,398,197. *See, e.g.*, Ex. 1026 ¶¶ 15-17, 32-34; Petitioners' Reply (Paper No. 17) at 13-15, 23.

FPH reserves the right: 1) to file a motion to exclude this objectionable exhibit, or portions thereof, and corresponding portions of Petitioners' Reply (Paper No. 17); 2) to challenge the credibility and/or weight that should be afforded to the exhibit, regardless of whether FPH files a motion to exclude the exhibit; 3) to challenge the sufficiency of the evidence to meet Petitioners' burden of proof on any issue, regardless of whether FPH has objected to, or files a motion to exclude, the evidence; and 4) to cross examine the declarant regarding his Second Declaration (Ex. 1026).

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 22, 2017

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 37 C.F.R. § 42.6(e)(1) and agreement of the parties, a true and correct copy of **PATENT OWNER'S OBJECTIONS TO EVIDENCE SERVED WITH REPLY** is being served via email on September 22, 2017, to counsel for ResMed Limited, ResMed Inc., and ResMed Corp at the email addresses below:

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