PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

Before the Honorable Thomas B. Pender
Administrative Law Judge

In the Matter of CERTAIN SLEEP-DISORDERED BREATHING TREATMENT SYSTEMS AND COMPONENTS THEREOF	Investigation No. 337-TA-890

ORDER NO. 14: DENYING RESPONDENTS' MOTION FOR SUMMARY DETERMINATION OF INVALIDITY OF U.S. PATENT NO. RE44,453

(March 18, 2014)

On February 6, 2014, Respondents BMC Medical Col., Ltd., 3B Medical, Inc., and 3B Products, L.L.C (collectively "Respondents") filed a motion for summary determination of invalidity of U.S. Patent No. RE 44,453 ("the '453 Patent"). (Motion Docket No. 890-010). Attached to the motion was a Statement of Undisputed Material Facts ("SMF") and a Memorandum of Law (hereinafter, "Respondents' Brief"). On February 12, 2014, Complainants ResMed Corp., ResMed Inc. and ResMed Ltd (collectively "ResMed") filed an unopposed motion for an extension of time to respond to the summary determination, which was granted. Pursuant to the extension, ResMed and the Commission Investigative Staff ("Staff") filed responses to the summary determination motion on February 20, 2014 (hereinafter, "ResMed Brief" and "Staff Brief"). ResMed also filed a response to Respondents' Statement of Undisputed Material Facts ("RRSMF").

On February 25, 2014, Respondents filed a motion to strike ResMed's reliance on certain belatedly identified evidence referenced in ResMed's response to Respondents' summary

determination motion. (Motion Docket No. 890-013). In Order No. 13, issued on March 14, 2014, this motion was granted-in-part and denied-in-part, which precluded ResMed from relying on a date for actual reduction to practice for the '453 Patent.

On February 27, 2014, Respondents filed a motion for leave to file a reply in support of their motion for summary determination. (Motion Docket No. 890-014). ResMed filed an opposition to this motion on March 10, 2014. Respondents argue they did not have a previous opportunity to address ResMed's arguments regarding one prior art reference or ResMed's new priority theories. But Respondents fail to cite any compelling reason that ResMed's prior art arguments warrant a reply, and ResMed's newly asserted date for reduction to practice was addressed in Order No. 13. Respondents' motion for leave to file a reply is therefore DENIED.

I. BACKGROUND

On July 19, 2013, ResMed filed its complaint in this investigation, alleging infringement of eight different patents, including U.S. Patent No. 7,614,398 ("the '398 Patent"). On February 10, 2014, the Commission determined not to review an Initial Determination allowing ResMed to amend the complaint and notice of investigation by substituting claims 1-7 of the '453 Patent for claims 1-7 of the '398 Patent. (*See* Order No. 7). The '453 Patent is entitled "Humidifier with Structure to Prevent Backflow of Liquid through the Humidifier Inlet" and it reissued on August 27, 2013, with 98 claims, naming inventors Alexander Virr, Ian Malcolm Smith, Perry David Lithgow, Richard Llewelyn Jones, and Andrew Cheung. The patent describes a humidifier for a continuous positive airway pressure ("CPAP") apparatus that is adapted to prevent liquid from undesirably exiting an inlet of the humidifier. ('453 Patent at 1:53-56). ResMed is asserting claims 1, 2, and 4-7 of the '453 Patent. Claim 1 reads:

1. A humidifier assembly for a CPAP apparatus, comprising
   a humidifier including

a base configured to retain a body of liquid therein, at least a portion of the base being constructed of a heat conducting material,

a top cover, and

a seal disposed between the top cover and the base; and

a connecting structure configured to connect between the CPAP apparatus and humidifier and allow communication of an outlet of the CPAP apparatus with an inlet of the humidifier, the connecting structure including

a housing providing a base portion to support the humidifier thereon, and

a retaining mechanism configured to secure the connecting structure to the CPAP apparatus,

wherein the base portion includes a heating element in contact with the heat conducting material of the base of the humidifier.

('453 Patent at 11:38-56). Claim 2 reads:

2. A humidifier assembly according to claim 1, wherein the top cover defines both an inlet and an outlet communicated with an interior of the base, the inlet configured to receive pressurized breathable gas and the outlet configured to deliver the pressurized breathable gas with added humidity.

('453 Patent at 11:38-61). And claims 4-7 read:

4. A humidifier assembly according to claim 1, wherein the connecting structure includes contact elements that communicate with a power supply within the CPAP apparatus.
5. A humidifier assembly according to claim 1, wherein the connecting structure is configured to allow removable attachment of the CPAP apparatus to the humidifier.
6. A humidifier assembly according to claim 1, wherein the heat conducting material is a metallic material.
7. A CPAP apparatus including a humidifier assembly according to claim 1.

('453 Patent at 11:65-12:7).

Pursuant to the *Markman* Order in this Investigation, the terms "base configured to retain a body of liquid therein" and "a seal disposed between the top cover and the base" have been construed to have their plain and ordinary meaning. (Order No. 8 at 39-46).

II. LEGAL STANDARD

A. Summary Determination

Commission Rule 210.18 governs summary determination, and states, *inter alia*, that:

> The determination sought by the moving party shall be rendered if the pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

19 CFR § 210.18(b).

The evidence "must be viewed in the light most favorable to the party opposing the motion…with doubt resolved in favor of the nonmovant." *Crown Operations Int'l, Ltd. v. Solutia,* Inc., 289 F.3d 1367, 1375 (Fed. Cir. 2002); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) ("When ruling on a motion for summary judgment, all of the nonmovant's evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant's favor."). "Issues of fact are genuine only if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party." *Id.* at 1375 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The trier of fact should "assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial." *EMI Group North America, Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998).

"Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate." *Sandt Technology, Ltd. v. Resco Metal and Plastics Corp.*, 264 F.3d 1344, 1357 (Fed. Cir. 2001) (Dyk, C.J., concurring). "In other words, '[s]ummary judgment is authorized

when it is quite clear what the truth is,' [citations omitted], and the law requires judgment in favor of the movant based upon facts not in genuine dispute." *Paragon Podiatry Laboratory, Inc. v. KLM Laboratories, Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993).

B. Anticipation

"A patent is invalid for anticipation if a single prior art reference discloses each and every limitation of the claimed invention. Moreover, a prior art reference may anticipate without disclosing a feature of the claimed invention if that missing characteristic is necessarily present, or inherent, in the single anticipating reference." *Schering Corp. v. Geneva Pharm., Inc.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003) (citations omitted). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Continental Can Company USA v. Monsanto Company,* 948 F.2d 1264, 1269 (Fed.Cir.1991). To be considered anticipatory, a prior art reference must describe the applicant's "claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention." *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 1346 (Fed. Cir. 2000) (quoting *In re Paulsen,* 30 F.3d 1475, 1479 (Fed. Cir. 1994)). Anticipation is a question of fact. *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 988 F.2d 1165, 1177 (Fed. Cir. 1993).

III. DISCUSSION

Respondents move for summary determination on three issues: (1) Anticipation of claims 1 and 4-7 of the '453 Patent based on a German Patent Application to Schatzl (DE 199 36 499 A1) ("Shatzl"); (2) Anticipation of all asserted claims of the '453 Patent based on a REMstar Heated Humidifier and CPAP (the "REMstar Device"); and (3) the priority date for the '453 Patent.

A. The Schatzl German Patent Application

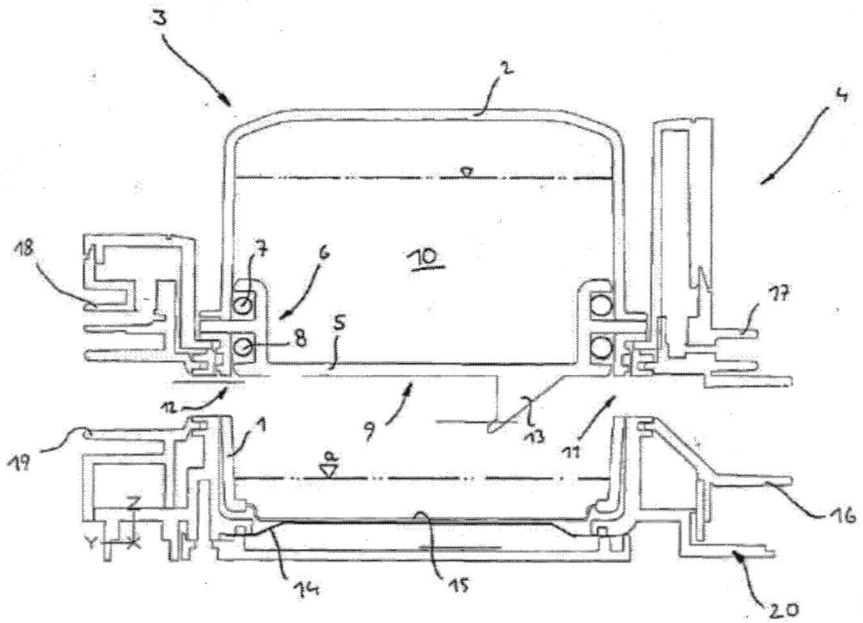
Respondents contend that the Schatzl German Patent Application DE 199 36 499 A1 ("Schatzl") anticipates the asserted claims of the '453 Patent. Schatzl is entitled "Appliance for the humidification of respiratory gas and CPAP apparatus provided for use with said appliance," and it describes an integrated humidifier adapted for use with a flow generator for CPAP therapy. There is no dispute that Schatzl was filed on August 5, 1999, and was published and disclosed to the public on February 8, 2001. (RRSMF ¶ 19). This is more than one year before the earliest application date for a parent of the '453 Patent, and Schatzl therefore qualifies as prior under 35 U.S.C. § 102(b).

Respondents also identified a commercial product known as the minni Max nCPAP (the "minni Max") as the commercial embodiment of Schatzl. (Respondents' Brief at 9). Respondents identify an informational brochure for the minni Max dated February 2000 but do not rely on it as prior art for the purposes of their summary determination motion; it is only cited as an illustration of the device described in Schatzl. (*Id.*)

1. A "Base" and "Top Cover"

Respondents identify a humidifier assembly including a base, labeled in Schatzl as the "tub element." (Respondents' Brief at 10-11). ResMed does not dispute that Schatzl discloses a tub element that meets the limitations of the '453 Patent requiring a base configured to retain a body of liquid therein. (RRSMF at ¶¶ 25-28). Respondents further cite Schatzl's disclosure that the tub element's bottom is made of a material with high thermal conductivity, such as metal. (Respondents' Brief at 11-12). ResMed does not dispute that there is a portion of the base constructed of a heat conducting material. (RRSMF at ¶¶ 30-32).

Respondents further identify a top cover identified in Schatzl as the "pot part." (Respondents' Brief at 12-14). There is no dispute that this "pot part" is a top cover to the Schatzl humidifier and, together with the "tub element," forms a "refill unit." (RRSMF at ¶¶ 33-34). Figure 1 of Schatzl depicts this refill unit, with the "tub element" identified with a label number 1 and the "pot part" labeled number 2:

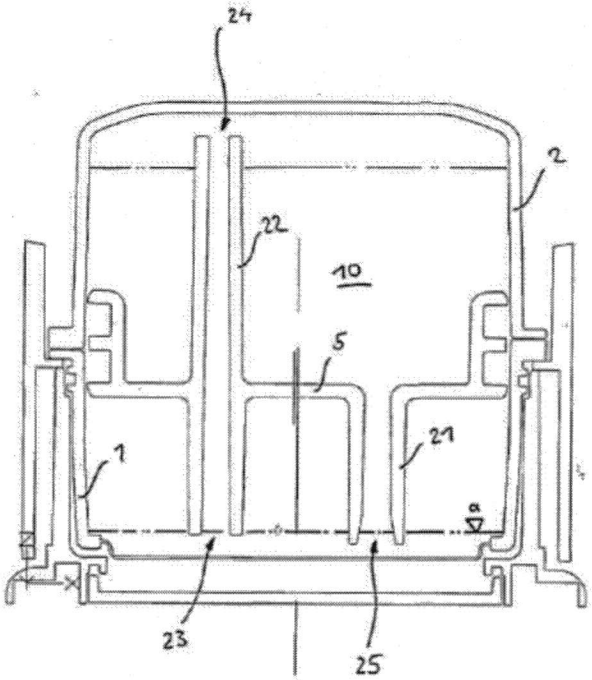


Schatzl Figure 1

2. A "Seal" Disposed Between the "Top Cover" and a "Base"

Respondents also identify a "seal," identified as element 6 in Schatzl, which provides a coupling between the top cover ("pot part") and the base ("tub element"). (Respondents' Brief at 14-15). Schatzl describes this as a "sealing structure," and Respondents contend that this disclosure meets the claim limitation of "a seal disposed between the top cover and the base." (*Id.*). ResMed disagrees that this sealing structure embodies the "seal" of the '453 Patent. (ResMed Brief at 19-24). ResMed contends that this structure is made of a rigid material and thus does not create a "seal" as required by the claim. (*Id.* at 19-20). Moreover, Schatzl

discloses two additional O-rings, identified as items 7 and 8, and ResMed contends that the need for these additional elements shows that the sealing structure in Schatzl, by itself, cannot create a seal. (*Id.* at 20). ResMed further argues that Figure 2 of Schatzl shows that the sealing structure does not extend the entire way around the perimeter of the humidifier, and it therefore cannot be a "disposed between" between the "top cover" and "base." (*Id.* at 20-21). In addition, the O-rings are not themselves "disposed between" the "top cover" and "base." (*Id.* at 21).



Shatzl Figure 2

The Staff agrees that ResMed's interpretation of Schatzl is plausible, and that expert testimony at the hearing may show that the sealing structure is not "disposed between" the "top cover" and "base," but rather is disposed inside of the lower rim of the top cover and the upper rim of the base, as shown in Figure 2. (Staff Brief at 3-6).

Considering the arguments of Respondents, ResMed, and the Staff, I find that Figure 2 of Schatzl creates ambiguity regarding whether the identified seal is disposed between the top cover

and the base. While Respondents have provided compelling arguments that the Schatzl sealing structure creates a seal and is located between the top cover and base, I cannot find that there is clear and convincing evidence of this fact without considering expert testimony. When viewed in the light most favorable to ResMed, I find that this disputed issue of material fact precludes the granting of summary determination of anticipation of the '453 Patent by Schatzl.

3. A "Connecting Structure"

Respondents identify a connecting structure in Schatzl that allows the communication of an outlet of the CPAP apparatus with an inlet of the humidifier. (Respondents' Brief at 16-18). In one embodiment, the outlet of the CPAP apparatus connects to the connecting structure, which is in turn connected to the base of the water tank. (*Id.*). In another embodiment, the inlet of the humidifier can be connected directly to the CPAP apparatus. (*Id.*). ResMed does not dispute that Schatzl discloses this connecting structure. (RRSMF at ¶¶ 40-44).

Respondents further identify a mountable housing into which the tub element can be inserted, which is labeled as element number 4 in Schatzl's figures. (Respondents' Brief at 18-20). And Schatzl discloses connector pegs for securing the connecting structure to the CPAP apparatus and a fastening appliance that achieves a rigid coupling of the humidifier with the CPAP apparatus. (*Id.* at 20-21). ResMed does not dispute Respondents' identification of the housing and retaining mechanism in Schatzl. (RRSMF at ¶¶ 40-44, 46-56).

Finally, Respondents identify a heating device in Schatzl identified as element 14, and Schatzl states that this heating device is thermally coupled with the bottom of the tub element. (Respondents' Brief at 22). ResMed does not dispute that Schatzl discloses this heating element. (RRSMF at ¶¶ 58-60).

4. Dependent Claims: A "Power Supply," "Removable Attachment," "Conducting Material," and "CPAP Apparatus"

Respondents identify several other elements of Schatzl's humidifier corresponding to limitations in dependent claims 4-7 of the '453 Patent, and ResMed does not dispute the disclosure of these elements in Schatzl. Respondents identify a "plug in adapter" of the housing that communicates with a power supply within the CPAP apparatus and meets the limitation of claim 4. (Respondents' Brief at 22-23). ResMed does not dispute that Schatzl discloses this plug in adapter. (RRSMF at ¶¶ 62-63). Respondents contend that the connecting pegs of the Schatzl humidifier allow removable attachment of the CPAP apparatus, as specified in claim 5. (Respondents' Brief at 24-25). ResMed does not dispute the disclosure of a "mountable housing" in Schatzl. (RRSMF at ¶¶ 65-68). Respondents also point to disclosures in Schatzl reciting that the tub element is composed of "a material with high thermal conductivity, in particular metal." (Respondents' Brief at 25). Respondents assert that this meets the limitations of claim 6, and ResMed does not dispute these disclosures. (RRSMF at ¶ 71). And finally, ResMed does not dispute Respondents' assertion that the Schatzl humidifier is designed to be connected and work with a CPAP apparatus, as required by claim 7. (Respondents' Brief at 26; RRSMF at ¶ 73).

B. Anticipation by REMstar Device

Respondents also assert that the '453 Patent is anticipated by the REMstar Heated Humidifier and the REMstar Pro/Plus CPAP (the "REMstar Device"). The REMstar Device was manufactured and sold in the United States by Respironics, Inc., and Respondents cite various invoices and other records showing that Respironics was selling the REMstar Device to customers in the United States by at least May 21, 2001. (Respondents' Brief at 27-31). [

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] ResMed disputes whether some of this evidence was publicly available or refers to the same REMstar Device that Respondents are asserting as prior art. (ResMed Brief at 28-29; RRSMF at ¶¶ 80, 90-91). ResMed and the Staff also dispute whether the public sale of the REMstar Device predates the reduction to practice of the claimed invention of the '453 Patent. (ResMed Brief at 24-27; Staff Brief at 7-8).

1. A "Base," "Top Cover," and "Seal

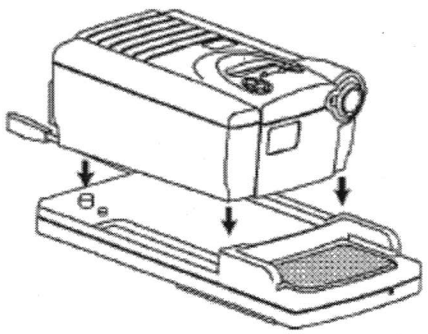
Respondents identify a humidifier in the REMstar Device including a base plate comprised of aluminum that retains a small amount of liquid. (Respondents' Brief at 31-34). ResMed does not dispute that the REMstar Device is an assembly for a CPAP apparatus with a heat conducting bottom. (RRSMF at ¶¶ 93, 97). ResMed also does not dispute that the REMstar Device has a top cover that is removable from the base plate. (Respondents' Brief at 34-36; RRSMF at ¶ 101). And ResMed does not dispute that the REMstar Device has a silicon seal between the top cover and base that prevents water from leaking from the water chamber. (Respondents' Brief at 36-37; RRSMF at ¶ 102).

2. A "Connecting Structure" and "Retaining Mechanism"

The REMstar Device includes a platform on which the humidifier and CPAP device can be placed, and Respondents identify this platform as a "connecting structure" satisfying the limitations of the '453 Patent. (Respondents' Brief at 39-43). Respondents identify a "heater plate" on the platform of the REMstar Device that is in contact with the base of the humidifier. (Respondents' Brief at 44-45). ResMed does not dispute that the REMstar Device includes this heating element. (RRSMF at ¶¶ 114-115).

Respondents identify two pegs on the connecting structure as a "retaining mechanism" for securing the CPAP device to the platform. (*Id.* at 42-43). ResMed disagrees with this characterization because the CPAP device rests on top of the humidifier platform and can be removed simply by lifting, and in ResMed's view, the pegs thus do not act to "secure" the device. (ResMed Brief at 29-31; Sheehan Decl. at ¶¶ 36-38). [

] But Respondents argue that the pegs nevertheless "secure the connecting structure to the CPAP apparatus" within the meaning of the '453 Patent. (Respondents' Brief at 43). A figure from a REMstar user manual shows the pegs on the connecting structure:



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Viewing this issue in the light most favorable to ResMed, I find that the pegs of the REMstar platform may not satisfy the claim limitation requiring "a retaining mechanism configured to secure the connecting structure to the CPAP apparatus." ResMed's expert, Neil Sheehan, has opined that these pegs do not secure the CPAP apparatus. [

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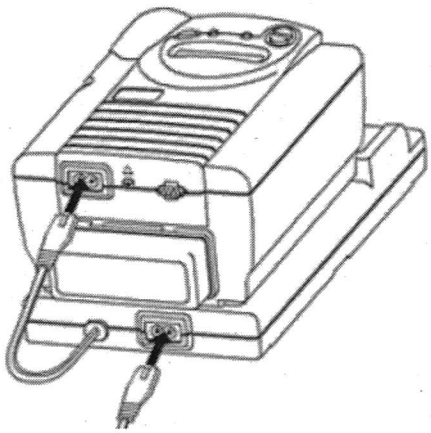
Respondents have not submitted any expert testimony explaining how one of ordinary skill in the art would interpret the claim language "configured to secure the connecting structure," and I therefore cannot find that there is clear and convincing evidence that the REMstar Device anticipates this limitation. I find that there is a genuine dispute of material fact regarding the operation of the REMstar platform pegs and an incomplete record on what this claim limitation requires.

3. Dependent Claims: A "Power Supply," "Removable Attachment," "Conducting Material," and "CPAP Apparatus"

Respondents further contend that the REMstar Device discloses the limitations in the asserted dependent claims of the '453 Patent. Regarding claim 4, Respondents identify "contact elements" in the connecting structure that communicate with "a power supply within the CPAP apparatus." (Respondents' Brief at 48-51). The REMstar Device includes a power jumper cord that connects the humidifier platform to the CPAP device, and Respondents' identify this power cord as the required "contact element." (Respondents' Brief at 48-51). The humidifier platform has its own power cord that connects to the wall, and the two power cords are depicted in the below figure:



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The facts regarding this power cord are undisputed, but ResMed interprets claim 4 of the '453 Patent to require that power is supplied from the CPAP device to the humidifier, while the REMstar Device supplies power from the platform to the CPAP device. (ResMed Brief at 31-32). I do not find ResMed's argument to be credible, and based on the record on summary determination, I cannot find a requirement in claim 4 that power be supplied from the CPAP apparatus to the connecting structure. The claim merely requires "contact elements that communicate with a power supply within the CPAP apparatus," and I find that there is no genuine issue of material fact that this limitation may be satisfied by a power cord linking a connecting structure to a CPAP apparatus as disclosed in the REMstar Device.

There is no dispute regarding the limitations in the other dependent claims. Respondents identify an inlet in the REMstar water tank for receiving gas from the CPAP device and an outlet for delivering gas to the patient as required by claim 2, and ResMed does not dispute the identification of these features. (Respondents' Brief at 45-47; RRSMF at ¶¶ 117-119). Respondents also assert that the CPAP apparatus is removable in the REMstar Device, and ResMed does not dispute this feature of claim 5. (Respondents' Brief at 51-53; RRSMF at ¶¶ 125-126). ResMed also does not dispute that the REMstar Device has a metallic base made of

aluminum, which Respondents cite to satisfy the limitation in claim 6. (Respondents' Brief at 53; RRSMF at ¶ 128). And ResMed does not dispute that the REMstar Device includes a CPAP flow generator integrated with a heated humidifier, as required by claim 7. (Respondents' Brief at 53; RRSMF at ¶ 130).

C. Priority Date

Respondents also move for summary determination that the priority date of the '453 Patent is no earlier than February 14, 2002, which would be later than the asserted May 2001 date for the sale of the REMstar Device. (Respondents' Brief at 53-61). In its Ground Rule 7.1 disclosure, ResMed disclosed a conception date of January 2000 and a priority date of February 16, 2001, the filing date of the first Australian provisional patent application related to the '453 Patent. (*Id.* at 54; RRSMF at ¶ 131).[1] The PCT application that led to the '453 Patent was filed on February 14, 2002. (Respondents' Brief at 54).

1. Australian Provisional Patent Applications

Respondents assert that several limitations of the '453 Patent are missing from the Australian Provisional Patent Applications dated February 16 and August 27, 2001. (Respondents' Brief at 56-59). "To obtain the benefit of the filing date of a parent application, the claims of the later-filed application must be supported by the written description in the parent 'in sufficient detail that one skilled in the art can clearly conclude that the inventor invented the claimed invention as of the filing date sought.' *Anascape, Ltd. v. Nintendo of Am. Inc.*, 601 F.3d 1333, 1335 (Fed. Cir. 2010) (quoting *Lockwood v. American Airlines, Inc.,* 107 F.3d 1565, 1572 (Fed. Cir.1997)). Respondents assert that the Australian Provisional Applications fail to disclose any "connecting structure" between the humidifier and the CPAP apparatus. (Respondents'

[1] ResMed asserted a date of actual reduction to practice in its Response to the motion, but that date was stricken pursuant to Order No. 13.

Brief at 56-57). ResMed does not dispute that the provisional applications lack this disclosure. (RRSMF at ¶ 139). Moreover, Respondents assert that the Australian provisionals fail to disclose the claimed "housing" and "retaining mechanism," the "contact elements that communicate with the power supply" or any power supply, and ResMed does not dispute that these limitations are also missing. (Respondents' Brief at 56-57; RRSMF at ¶¶ 140, 144-145). Respondents point out that the heating element described in the first Australian Provisional is located in the CPAP apparatus rather than a connecting structure, which is not disputed by ResMed. (Respondents' Brief at 47; RRSMF at ¶ 142). There appears to be no dispute between the parties that there was no constructive reduction to practice of the asserted claims based on the 2001 Australian Provisional Patent Applications.

2. Conception of the '453 Patent in January 2000

Respondents argue that ResMed's identified conception documents fail to establish that the inventors had conceived the complete and operative invention by January 2000. (Respondents' Brief at 59-61). Conception requires "the formation in the mind of the inventor, of a definite and permanent idea of the complete and operative invention, as it is [t]hereafter to be applied in practice." *Dawson v. Dawson*, 710 F.3d 1347, 1352 (Fed. Cir. 2013). Respondents contend that ResMed's sketches do not show the inside of the product and fail to depict the base, seal, or connecting structure. (Respondents' Brief at 60). Respondents further contend that the sketches do not show that the bottom of the base is made of a heat conducting material, or that it is in contact with a heating element of a connecting structure. (*Id.*) ResMed disputes Respondents' characterization of the inventor sketches and submits a declaration from its expert, Mr. Sheehan, identifying these elements in various documents that it dates to January 2000:

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(ResMed Brief at 25-26). The Staff agrees with ResMed that a genuine issue of material fact exists regarding whether the inventors of the '453 Patent conceived and reduced to practice their invention before the REMstar Device was known, used or made by others in this country. (Staff Brief at 7-8). Respondents moved to strike ResMed's conception documents, which would have eliminated ResMed's response, but that request was denied in Order No. 13. Respondents do not offer any of their own expert testimony evaluating ResMed's conception sketches, and viewing this evidence in the light most favorable to ResMed, I find that there is a dispute of material fact regarding the alleged January 2000 conception date.

IV. CONCLUSION

For the reasons discussed above, Respondents' Motion for Summary Determination of Invalidity of the '453 Patent is hereby DENIED. For both Schatzl and the REMstar Device, I find that there is a genuine dispute of material fact regarding at least one limitation. Moreover, there is a genuine dispute regarding whether the REMstar Device qualifies as prior art.

This order is being issued as confidential, and a public version will be issued pursuant to Commission Rule 210.5(f). Within 7 days of the date of this order, the parties shall jointly submit: (1) a proposed public version of this order with any proposed redactions bracketed in red; and (2) a written justification for any proposed redactions specifically explaining why the piece of information sought to be redacted is confidential and why disclosure of the information would be likely to cause substantial harm or likely to have the effect of impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions.[2]

SO ORDERED.

Thomas B. Pender
Administrative Law Judge

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[2] Under Commission Rules 210.5 and 201.6(a), confidential business information includes:

> information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

See 19 C.F.R. § 201.6(a). Thus, to constitute confidential business information the disclosure of the information sought to be designated confidential must ***likely have the effect of*** either: (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (2) ***causing substantial harm*** to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.

IN THE MATTER OF CERTAIN SLEEP-DISORDERED BREATHING TREATMENT SYSTEMS AND COMPONENTS THEREOF **337-TA-890**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 14** have been served upon, **The Office of Unfair Import Investigations** and the following parties on MARCH 26, **2014.**

Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
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Washington, DC 20436

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