UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN SLEEP-DISORDERED BREATHING TREATMENT SYSTEMS AND COMPONENTS THEREOF**	**Investigation No. 337-TA-879** **(Advisory Opinion Proceeding)**

ORDER

The Commission instituted the underlying investigation on April 25, 2013, based on a complaint filed on March 28, 2013, and supplemented on April 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Australia (collectively, "ResMed"). 78 Fed. Reg. 25475 (May 1, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of infringement of claims 1, 2, 4, 5, 17, and 28 of U.S. Patent No. 6,216,691, claims 1 and 20 of U.S. Patent No. 6,935,337, claim 15 of U.S. Patent No. 7,159,587, claims 1, 5, 6, 11, 12, 18–20, 35, and 36 of U.S. Patent No. 7,487,772, claims 1–7 of U.S. Patent No. 7,614,398, claims 59, 60, 63, and 72–75 of U.S. Patent No. 7,743,767, and claims 17, 21–24, 29, and 32–37 of U.S. Patent No. 7,997,267. The Commission's notice of investigation named as respondents Apex Medical Corp. of New Taipei City, Taiwan and Apex Medical USA Corp. of Brea, California (collectively, "Apex") and Medical Depot Inc., d/b/a Drive Medical Design & Manufacturing of Port Washington, New York. The Office of Unfair Import Investigations participated in the investigation.

Medical Depot Inc. and Apex were previously terminated from the investigation on the basis of consent orders. Order Nos. 8 (unreviewed by the Commission, July 18, 2013) and 11 (unreviewed by the Commission, Aug. 8, 2013).

On September 23, 2013, Apex filed a request with the Commission asking for institution of an advisory opinion proceeding to declare that their redesigned sleep-disordered breathing treatment systems are not covered by the consent order. Apex also requested that the proceeding be conducted expeditiously. ResMed filed a response on October 18, 2013, opposing Apex's request.

Upon consideration of this matter, the Commission hereby ORDERS that:

1. Pursuant to Commission rule 210.79(a), 19 C.F.R. § 210.79(a), an advisory opinion proceeding is instituted to determine whether Apex's redesigned sleep-disorder breathing treatments infringe claims 1, 2, 4, 5, 17, and 28 of U.S. Patent No. 6,216,691, claims 1 and 20 of U.S. Patent No. 6,935,337, claim 15 of U.S. Patent No. 7,159,587, claims 1, 5, 6, 11, 12, 18–20, 35, and 36 of U.S. Patent No. 7,487,772, claims 1–7 of U.S. Patent No. 7,614,398, claims 59, 60, 63, and 72–75 of U.S. Patent No. 7,743,767, and claims 17, 21–24, 29, and 32–37 of U.S. Patent No. 7,997,267 and, therefore are covered by the consent order issued on August 8, 2013, by the Commission in this investigation.

2. For purposes of the advisory opinion proceeding so instituted, the following are named as parties:

    a. ResMed Corp. of San Diego, California;

    b. ResMed Inc. of San Diego, California;

    c. ResMed Ltd. of Australia;

    d. Apex Medical Corp. of New Taipei City, Taiwan; and

    e. Apex Medical USA Corp. of Brea, California.

3. The request for an advisory opinion is certified to the Chief Administrative Law Judge, Charles A. Bullock for assignment to a presiding administrative law judge for the appropriate proceeding and issuance of an initial advisory opinion ("IAO"). The advisory opinion proceedings are to be completed as expeditiously as practicable. The administrative law judge may conduct any

proceedings he deems necessary, including taking evidence and ordering discovery, to issue his IAO.

4. The IAO shall rule on whether Apex's redesigned sleep-disorder breathing treatments infringe claims 1, 2, 4, 5, 17, and 28 of U.S. Patent No. 6,216,691, claims 1 and 20 of U.S. Patent No. 6,935,337, claim 15 of U.S. Patent No. 7,159,587, claims 1, 5, 6, 11, 12, 18–20, 35, and 36 of U.S. Patent No. 7,487,772, claims 1–7 of U.S. Patent No. 7,614,398, claims 59, 60, 63, and 72–75 of U.S. Patent No. 7,743,767, and claims 17, 21–24, 29, and 32–37 of U.S. Patent No. 7,997,267 and, therefore are covered by the consent order issued on August 8, 2013, by the Commission in this investigation.

5. Petitions for review of the IAO may be filed within ten calendar days after service of the IAO. Responses to such petitions may be filed within five business days after service of any petitions for review.

6. The IAO shall become the Commission's advisory opinion within 45 days after service of the IAO, unless the Commission orders review of the IAO or changes the deadline for determining whether to review the IAO.

7. A copy of this Order shall be served upon each party of record in this investigation.

8. Notice of this order shall be published in the *Federal Register.*

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: December 11, 2013

CERTAIN SLEEP-DISORDERED BREATHING TREATMENT SYSTEMS AND COMPONENTS THEREOF

337-TA-879: Advisory

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INSTITUTION OF ADVISORY OPINION AND COMMISSION ORDER** has been served by hand upon the Commission Investigative Attorney, Lisa Kattan, Esq., and the following parties as indicated, on **December 11, 2013**.

Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

On Behalf of Complainants ResMed Corporation, ResMed Incorporated, and ResMed Limited:

Frank Scherkenbach, Esq.
FISH & RICHARDSON P.C.
One Marina Park Drive
Boston, MA 02210-1878

( ) Via Hand Delivery
(X) Via Express Mail
( ) Via First Class Mail
( ) Other: _____

On Behalf of Respondents Apex Medical Corporation and Apex Medical USA Corporation:

Jeffrey L. Eichen
Novak Druce Connolly Bove & Quigg LLP
The Nemours Building
1007 N. Orange Street, 9th Floor
PO Box 2207
Wilmington, DE 19899

( ) Via Hand Delivery
(X) Via Express Mail
( ) Via First Class Mail
( ) Other: _____