Paper No. 7 Entered: January 21, 2015

## UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

\_\_\_\_\_

BMC MEDICAL CO. LTD., 3B PRODUCTS, L.L.C., and 3B MEDICAL INC., Petitioner,

v.

RESMED LIMITED, Patent Owner.

Case IPR2014-01363 Patent RE 44,453 E

Before MEREDITH C. PETRAVICK, SCOTT E. KAMHOLZ, and BARRY L. GROSSMAN, *Administrative Patent Judges*.

KAMHOLZ, Administrative Patent Judge.

DECISION Institution of *Inter Partes* Review 37 C.F.R. § 42.108

## I. INTRODUCTION

BMC Medical Co. Ltd., 3B Products, L.L.C., and 3B Medical Inc. (collectively "Petitioner") filed a Petition (Paper 2, "Pet."), requesting institution of an *inter partes* review of claims 9–19, 23–36, 40 and 63 U.S. Patent No. RE 44,453 E (Ex. 1001, "the '453 patent"). ResMed Limited ("Patent Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314.

We institute *inter partes* review because we determine that the information presented in the Petition and in the Preliminary Response shows that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition. *See* 35 U.S.C. § 314(a). In particular, we institute *inter partes* review with respect to claims 9–19, 23–36, 40 and 63.

## II. DISCUSSION

A. The '453 Patent

The '453 patent relates to a humidifier for use with a continuous positive airway pressure (CPAP) device. Ex. 1001, 1:25–28. As the '453 patent explains, humidification of air delivered to CPAP patients may increase comfort. *Id.* at 1:31–33.

Among the challenged claims, claims 9, 25, 40, and 63 are independent. Claims 9, 25, and 40 are reproduced below.

- 9. A humidifier for humidifying a flow of breathable gas to be delivered to a patient, the humidifier comprising:
  - a humidifier body configured to retain a body of liquid having a predetermined maximum volume, the humidifier body comprising:

- a first chamber having a first chamber inlet configured to receive the flow of breathable gas, and
- a second chamber in communication with the first chamber through a passage, the second chamber being structured to contain a predetermined maximum volume of liquid when the humidifier body is in a normal upright, operating position, the second chamber comprising a second chamber outlet configured to deliver the flow of breathable gas with added humidity,
- wherein the first chamber, the second chamber, and the passage are arranged such that when liquid is contained in the second chamber in the upright, normal operating position, the possibility of liquid flowing from the second chamber through the passage is reduced or prevented, and liquid that flows from the second chamber and through the passage is collected in the first chamber such that liquid is discouraged or prevented from spilling back from the first chamber inlet when the humidifier body is inadvertently rotated from the upright, normal operating position to a non-upright position.

# 25. A humidifier assembly for a CPAP apparatus, comprising:

- a humidifier that defines a reservoir for a body of liquid, and a fluid passage between an inlet provided at a rear side of the humidifier and an outlet of the humidifier for exposure of a flow of breathable gas from the CPAP apparatus to the body of liquid, the humidifier comprising
- a base configured to retain the body of liquid therein and including a heat conducting material, and

- a top cover that covers the base, the top cover including the outlet; and
- a connecting structure configured to connect between the CPAP apparatus and humidifier and allow communication of an outlet of the CPAP apparatus with the inlet of the humidifier, the connecting structure comprising a housing, the housing providing a generally horizontal, open receptacle within which the humidifier may be removably disposed by generally horizontally inserting the humidifier within and pulling it out of the receptacle, the housing comprising a base portion forming a receptacle lower surface of the configured to support the humidifier thereon, a heating element positioned on the lower surface and in thermal contact with the heat conducting material of the base when the humidifier is disposed in the receptacle, and retaining portion a positioned adjacent the top cover of the humidifier and being spaced above the base retaining portion, portion being the configured assist in retaining to humidifier the generally horizontal in receptacle.

# 40. A humidifier, comprising:

a humidification chamber having a reservoir configured to store a body of liquid having a maximum value, the humidification chamber defining a portion of a fluid passage, the fluid passage configured to direct a flow of breathable gas into exposure with the body of liquid to humidify the flow of breathable gas, the humidification chamber also having an inlet for the flow of

breathable gas and an outlet for the humidified flow of breathable gas; and

a backflow chamber forming another portion of the fluid passage and in fluid communication with the humidification chamber, the backflow chamber having an inlet to receive the flow of breathable gas and an outlet in fluid communication with the inlet of the humidification chamber,

wherein the maximum volume of the body of liquid is contained entirely in the humidification chamber when the humidifier is in a normal, upright operating position, and a level of the maximum volume of the body of liquid is below the humidification chamber inlet and/or the backflow chamber inlet when the humidifier is in a non-upright position in which a portion of the body of liquid is transferrable along the fluid passage from the humidification chamber to the backflow chamber.

# B. Challenges

Petitioner challenges the claims as follows:

Reference	Basis	Claims Challenged
Wilson <sup>1</sup>	§ 102	9–19, 40, and 63
Wilson and Dobson <sup>2</sup>	§ 103	23 and 24
HumidAire <sup>3</sup>	§ 102	25–27

\_

<sup>&</sup>lt;sup>1</sup> U.S. Pat. No. 1,085,833, iss. Feb. 3, 1914 (Ex. 1002).

<sup>&</sup>lt;sup>2</sup> U.S. Pat. No. 5,673,687, iss. Oct. 7, 1997 (Ex. 1019).

<sup>&</sup>lt;sup>3</sup> Instruction Manual for Sullivan® HumidAire Humidifier, 1998 (Ex. 1003).

Reference	Basis	Claims Challenged
HumidAire and Helot <sup>4</sup>	§ 103	28
HumidAire, Helot, and Maeda <sup>5</sup>	§ 103	29–31
HumidAire, Ursy, <sup>6</sup> and Prime <sup>7</sup>	§ 103	32
HumidAire, Helot, Maeda, and Ursy	§ 103	33
HumidAire, Helot, Maeda, Ursy, and Glynn <sup>8</sup>	§ 103	34–36

Petitioner also relies upon Declaration testimony of Mr. Steve Bordewick in support of its challenges. Mr. Bordewick's Declaration is provided as Exhibit 1004.

#### C. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). Claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech.*, *Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

<sup>&</sup>lt;sup>4</sup> U.S. Pat. No. 6,185,095 B1, iss. Feb. 6, 2001 (Ex. 1023).

<sup>&</sup>lt;sup>5</sup> U.S. Pat. No. 5,870,283, iss. Feb. 9, 1999 (Ex. 1013).

<sup>&</sup>lt;sup>6</sup> U.S. Pat. No. 4,588,425, iss. May 13, 1986 (Ex. 1017).

<sup>&</sup>lt;sup>7</sup> PCT Publication No. WO 00/21602, pub. Apr. 20, 2000 (Ex. 1018).

<sup>&</sup>lt;sup>8</sup> U.S. Pat. No. 2,780,708, iss. Feb. 5, 1957 (Ex. 1024).

## 1. "Humidifier"

The parties dispute the proper construction of the term "humidifier," which is recited in every challenged claim. Petitioner does not offer an express construction, but does argue that a device that "impregnates air with a liquid" is within the scope of the term "humidifier." Pet. 12 n.3 (citing Ex. 1004 ¶ 30). Patent Owner argues that "humidifier" should be construed to mean a "structure that is adapted and used to regulate the amount of water vapor in a specific container or area." Prelim. Resp. 12–17; 21–24.

We determine, on the present record, that the preamble recitations of "humidifier" in all the challenged claims are statements of intended use. This term does not bear the typical indicia of patentable weight; for example, it does not provide antecedent basis for any structural limitation in the claim body, is not essential to understand any limitations in the claim body, and does not recite any structure underscored as important by the specification. *See Catalina Marketing Int'l., Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). The claim body defines a structurally complete invention and does not depend on the preamble to give it "life, meaning, and vitality." *See Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997); *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999).

We also determine, on the present record, that other occurrences of the term "humidifier," or related terms, in the claims similarly are used to convey only intended use.

For these reasons, we determine, on the present record, that "humidifier" is not accorded patentable weight, beyond requiring that the prior-art structure be capable of the claimed use. *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

2. "A retaining mechanism to secure the connecting structure to the CPAP apparatus" (claim 28)

We determine that express construction of this term is not required for purposes of this decision.

3. "A resiliently biased locking member configured to engage a projection of the CPAP apparatus"

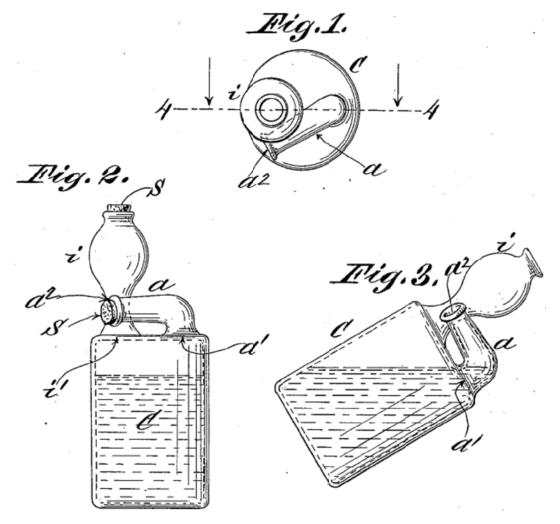
This term occurs in claim 29, which is reproduced below.

29. A humidifier assembly according to claim 28, wherein the retaining mechanism comprises a resiliently biased locking member configured to releasably engage a projection of the CPAP apparatus.

Petitioner does not propose a construction of the term. Patent Owner argues that "projection of the CPAP apparatus" should be construed as "a structure of a CPAP apparatus that extends outwardly beyond a prevailing line or surface of the CPAP apparatus" and cites several dictionary definitions in support. Prelim. Resp. 18–19 (citing Ex. 2001, 1402; Ex. 2002, 1362; Ex. 2003, 1147; Ex. 2007, 1147). Patent Owner also argues that the '453 patent's description of the CPAP apparatus as including "prongs or tabs" is consistent with construing "projection" as proposed. *Id.* at 19–20 (citing Ex. 1001, 10:6–13).

On the present record, we determine that "projection of the CPAP apparatus" is not a positively-recited limitation of the claimed humidifier assembly. Rather, it is recited as part of the intended use of the resiliently biased locking member. For this reason, construction of "projection" is not required for purposes of this decision.

D. Anticipation of Claims 9–19, 40, and 63 by WilsonWilson discloses a vaporizing inhaler. Ex. 1002, 1:8–10. Wilson'sFigures 1, 2, and 3 are reproduced below.



Figures 1 and 2 show top and elevation views, respectively, of a vaporizing inhaler in an upright position, and Figure 3 shows an elevation view of the vaporizing inhaler in a tilted position. As shown in Wilson's Figure 2, the device includes container C, which contains a quantity of liquid, an air inlet duct a, which communicates with container C by air inlet port  $a^{I}$  and draws in air from outside through exterior port  $a^{2}$ . Id. at 1:40–52. There is also an inhalation nozzle I, which communicates with container C

by vapor exhaust port  $i^I$ . Wilson's Figure 1 indicates the relative positions of the inlets. In use, air sucked into the device is pulled over the liquid, which impregnates the air with medicinal vapor. Id. at 1:75–78. Fig. 3 illustrates an alternate mode of use, in which the device is tilted in order to pull air through the liquid. Id. at 1:70–74. When the device is tilted, the liquid is caught in air inlet duct a to prevent spillage. Id. at 1:54–61.

Petitioner argues that Wilson discloses all limitations of claims 9–19, 40, and 63 in the claimed arrangements. Pet. 8–12; 12–26 (chart).

Patent Owner argues that Wilson's device is not a "humidifier," because it is not used to regulate the amount of water vapor in a specific container or area. Prelim. Resp. 12–17; 21–24. Patent Owner argues that the impregnation of air with only water—not medicinal vapor— is humidification, and only then if it is to an appreciable degree. *Id.* at 14. For example, according to Patent Owner, a glass of water open to the air is not a humidifier, because it makes the surrounding air more humid only "in the tiniest way imaginable." *Id.* Patent Owner also argues that Wilson describes an inhaler, not a humidifier, and that a humidifier is a "recognizable structure." *Id.* at 21.

Patent Owner also argues, with respect to claims 9–19, that Wilson's tilted position is not an "inadvertent" position but rather a normal mode of operation when the user intends to bubble air through the medicinal fluid. *Id.* at 24–28. Patent Owner also argues that, although Wilson prevents spillage in that one particular normal tilted mode, it will not prevent spillage in any number of other orientations. *Id.* at 28–33.

Upon consideration of the parties' arguments and evidence, we determine that Petitioner has demonstrated a reasonable likelihood that

claims 9–19, 40, and 63 are unpatentable for anticipation by Wilson. Patent Owner's arguments concerning whether Wilson discloses a humidifier are not convincing at this stage of the proceeding. We have determined, on the present record, that the term "humidifier," as used in the challenged claims, is merely an expression of intended use and is not accorded patentable weight, beyond requiring that the prior-art structure be capable of the claimed use. Section II.C.1, *supra*. Patent Owner's arguments concerning whether Wilson's tilted position is "inadvertent" are also not convincing. Wilson discloses that spills are prevented even when tilted horizontally. Ex. 1002, 1:57–59. Although the horizontal position is not "inadvertent" for Wilson, this term is merely an expression of intended use and is given no patentable weight, aside from requiring that the prior-art device be capable of being oriented in a non-upright position and preventing a spill when so oriented. Patent Owner's argument that Wilson does not prevent spills in orientations other than that shown in Wilson's Figure 3 is unconvincing because it is not commensurate with the scope of claim 9, which requires that spills be prevented when the device is rotated to "a" non-upright position, not every non-upright position.

E. Obviousness of claims 23 and 24 over Wilson and Dobson
Claim 23 is directed to "an apparatus for supplying breathable gas
under pressure" that includes the humidifier of claim 9 in combination with
a blower, a connecting structure, and an air delivery conduit. Claim 24 adds
a patient interface connected to the air delivery conduit.

Petitioner argues that Dobson discloses a CPAP system having all the elements of claim 23 but lacks the claimed details of the humidifier.

Pet. 27–28. Petitioner argues that it would have been obvious to employ

Wilson as a well-known way to humidify air (i.e., by bubbling air through liquid), an observation Dobson itself makes. *Id.* at 27 (citing Ex. 1019, 1:13–16). Petitioner also argues that it would have been obvious to attach Dobson's blower, connector, and tubing to Wilson as an obvious design choice to automate use of Wilson's device. *Id.* at 29–31 (citing Ex. 1004 ¶¶ 94–97). Patent Owner directs no arguments specifically to this challenge in its Preliminary Response.

Upon consideration of the parties' arguments and evidence, we determine that Petitioner has demonstrated a reasonable likelihood that claims 23 and 24 are unpatentable for obviousness over Wilson and Dobson.

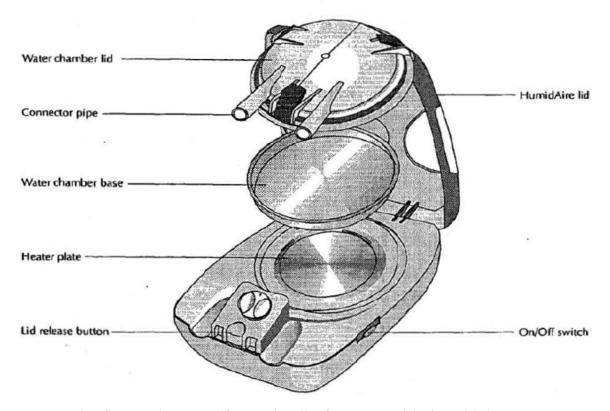
# F. Anticipation of claims 25–27 by HumidAire

Claim 26 depends from claim 25 and requires that the base and top cover be detachably connected to one another. Claim 27 depends from claim 26 and adds to the housing an opening that communicates with the inlet when the humidifier is fully inserted into the generally horizontal receptacle.

HumidAire is described by Petitioner as an instruction manual that was published in 1998 and accompanied the Sullivan® HumidAire heated humidifier. Pet. 31; Ex. 1003, 7. Patent Owner does not contest Petitioner's assertion that HumidAire was published in 1998. We accept Petitioner's assertion for purposes of this decision.

A figure from page 2 of HumidAire is reproduced below:

## FRONT VIEW



The figure shows a "front view" of an assembly in which a water chamber, formed by a lid and a base, is received on a heater plate inside a clamshell enclosure formed by the HumidAire base and the HumidAire lid. Ex. 1003, 2. Connector pipes emanate from the front of the device and communicate with the water chamber interior to flow air through the water chamber. *Id.* at 4.

Petitioner argues that HumidAire discloses every limitation of claims 25–27 in the claimed arrangements. Pet. 31–34; 34–40 (chart). In particular, Petitioner argues that a concavity in the HumidAire base and the recessed portion of the HumidAire lid collectively form the claimed receptacle in which the water chamber is received. Pet. 37.

Patent Owner argues that HumidAire does not disclose (1) "a generally horizontal, open receptacle within which the humidifier may be

removably disposed by generally horizontally inserting the humidifier within and pulling it out of the receptacle," or (2) "a humidifier that defines . . . a fluid passage between an inlet provided at a rear side of the humidifier." Prelim. Resp. 33–46.

As to limitation (1), Petitioner argues that some amount of horizontal movement is required to position the water chamber between the edges of the housing. Pet. 38 n.14. Patent Owner argues that "there is simply no way" to insert or remove the water chamber in a generally horizontal manner and that vertical motion is "the only way" the water chamber can be inserted into the recess. Prelim. Resp. 36.

Upon consideration of the parties' arguments and evidence at this stage of the proceeding, we determine that the recitation "may be removably disposed" indicates merely that the housing must be capable of allowing this type of disposition. The HumidAire device appears, on the present record, to be capable of allowing insertion and removal of the humidifier by horizontal motion.

As to limitation (2), Petitioner argues that "rear" is not defined with respect to any particular feature of the humidifier recited in claim 25, so that the first connector pipe in HumidAire would be considered to emanate from the rear side of the water chamber when the water chamber is viewed from a side opposite the first connector. Pet. 35 n.12. Patent Owner argues that HumidAire unambiguously labels the side on which the connector pipes emanate as the "front" of the water chamber and that the device is configured to be operated with the pipes facing front. Prelim. Resp. 44 (citing "Front View" label at Ex. 1003, 2, reproduced above). Patent Owner argues that Petitioner's arbitrarily-assigned "rear" direction ignores the

"structure and context" of the system and renders the "rear" limitation meaningless. *Id.* at 44–46.

The evidence of record at this stage of the proceeding does not support Patent Owner's argument. The term "rear" as used in claim 25 simply identifies one side of the device without describing that side's relationship with other parts of the device. On the present record, the term "rear," without more, does not signify any particular structural relationship between the fluid passage and another claimed feature that differs from the structure shown in HumidAire. Rather, "rear" describes the intended use of the claimed device and is accorded no patentable weight, aside from requiring that the prior-art device be capable of being oriented as claimed. *See Schreiber*, 128 F.3d at 1477. Patent Owner's arguments address differences in intended use between the claimed device and HumidAire, not structural distinctions.

Upon consideration of the parties' arguments and evidence at this stage of the proceeding, we determine that Petitioner has demonstrated a reasonable likelihood that claims 25–27 are unpatentable for anticipation by HumidAire.

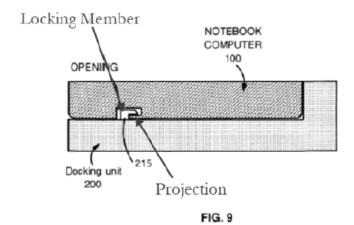
G. Obviousness of Claim 28 Over HumidAire and Helot
Claim 28 depends from claim 27 and adds a retaining mechanism to
secure the connecting structure to the CPAP apparatus.

Petitioner argues that, although HumidAire does not disclose the claimed retaining mechanism, it would have been obvious to modify HumidAire to include a locking mechanism, such as the locking system disclosed in Helot for securing a portable computer to a docking station. Pet. 40–42. Petitioner argues that a retaining mechanism would allow a user

to stack the component parts to save table space without concern about the stacked part falling off. *Id.* at 41–42 (citing Ex. 1004 ¶ 129). Patent Owner directs no arguments specifically to this challenge in its Preliminary Response.

Upon consideration of the parties' arguments and evidence, we determine that Petitioner has demonstrated a reasonable likelihood that claim 28 is unpatentable for obviousness over HumidAire and Helot.

H. Obviousness of Claims 29–31 Over HumidAire, Helot, and Maeda Claim 29 is reproduced above in section II.C.3. Petitioner argues that Helot discloses a retaining mechanism that includes a resiliently biased locking member in the form of a spring-loaded lever and engagement members. Pet. 45 (citing Ex. 1023, 5:7–14; 5:35–6:27; Figs. 4A, 4B). Petitioner argues that Helot discloses that its engagement members engage corresponding apertures to secure the computer to the docking station. Id. (citing Ex. 1023, 3:58–4:11; Figs. 1, 4A, 4B). Petitioner argues that, although Helot does not disclose that the corresponding apertures include projections, Maeda discloses a locking member that is configured to engage a projection for the purpose of securing a portable computer to a docking station. Id. at 46–47 (citing Ex. 1013, 4:49–58, 6:56–60, Fig. 9). Petitioner provides a copy of Maeda's Figure 9 that is annotated to indicate what Petitioner considers to be a locking member and a projection. Pet. 48. The annotated figure is reproduced below:



Maeda's Figure 9, as annotated by Petitioner, shows notebook computer 100 secured to docking unit 200 by hook 215 that extends from the docking unit into an opening in the notebook computer and hooks around a lip of material extending from the computer into the opening. *Id.* Petitioner argues that it would have been obvious to combine HumidAire and Helot for the reasons given in its challenge of claim 28, and that it would have been obvious further to use Maeda's locking member configured to engage a projection in combination with HumidAire and Helot in order to improve the engagement of parts. *Id.* at 47 (citing Ex. 1004 ¶ 36).

Patent Owner argues that Maeda does not disclose a "projection" because the lip does not project outward from the surface of the notebook computer. Prelim. Resp. 48–50.

Upon consideration of the parties' arguments and evidence, we determine that Petitioner has demonstrated a reasonable likelihood that claims 29–31 are unpatentable for obviousness over HumidAire, Helot, and Maeda. Patent Owner's argument that Maeda does not disclose a projection is inapposite because, as discussed above in section II.C.3, "projection of the CPAP apparatus" is not a positively-recited limitation of the humidifier assembly of claims 29–31.

I. Obviousness of Claim 32 Over HumidAire, Ursy, and Prime
Petitioner argues that the subject matter of claim 32 would have been
obvious over the combination of HumidAire, Ursy, and Prime. Pet. 49–52
(citing Ex. 1004 ¶¶ 147–49). Patent Owner does not direct any argument in
the Preliminary Response to this particular challenge. We have considered
the arguments and evidence of record concerning this challenge and are
persuaded of a reasonable likelihood, on the present record, that claim 32 is
unpatentable on this basis.

J. Obviousness of Claim 33 Over HumidAire, Helot, Maeda, and Ursy

Petitioner argues that the subject matter of claim 33 would have been obvious over the combination of HumidAire, Helot, Maeda, and Ursy. Pet. 52–54 (citing Ex. 1004 ¶¶ 154–55). Patent Owner does not direct any argument in the Preliminary Response to this particular challenge. We have considered the arguments and evidence of record concerning this challenge and are persuaded of a reasonable likelihood, on the present record, that claim 33 is unpatentable on this basis.

K. Obviousness of Claims 34–36 Over HumidAire, Helot, Maeda, Ursy, and Glynn

Petitioner argues that the subject matter of claims 33–36 would have been obvious over the combination of HumidAire, Helot, Maeda, Ursy, and Glynn. Pet. 54–59 (citing Ex. 1004 ¶¶ 158–59, 162–63, 166–67). Patent Owner does not direct any argument in the Preliminary Response to this particular challenge. We have considered the arguments and evidence of record concerning this challenge and are persuaded of a reasonable

IPR2014-01363 Patent RE 44,453 E

likelihood, on the present record, that claims 34–36 are unpatentable on this basis.

#### III. CONCLUSION

For the foregoing reasons, we determine that Petitioner has demonstrated that there is a reasonable likelihood of its proving unpatentability of claims 9–19, 23–36, 40 and 63 of the '453 patent.

The Board has not made a final determination on the patentability of the challenged claims.

#### IV. ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review is hereby instituted as to claims 9–19, 23–36, 40 and 63 of U.S. Patent No. RE 44,453 E on the following grounds of unpatentability:

- A. Anticipation of Claims 9–19, 40, and 63 by Wilson;
- B. Obviousness of claims 23 and 24 over Wilson and Dobson;
- C. Anticipation of claims 25–27 by HumidAire;
- D. Obviousness of Claim 28 Over HumidAire and Helot;
- E. Obviousness of Claims 29–31 Over HumidAire, Helot, and Maeda;
- F. Obviousness of Claim 32 Over HumidAire, Ursy, and Prime;
- G. Obviousness of Claim 33 Over HumidAire, Helot, Maeda, and Ursy; and
- H. Obviousness of Claims 34–36 Over HumidAire, Helot, Maeda, Ursy, and Glynn;

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and

IPR2014-01363 Patent RE 44,453 E

37 C.F.R. § 42.4, notice is hereby given of the institution of a trial, the trial commencing on the entry date of this decision; and

FURTHER ORDERED that the trial is limited to the grounds identified above, and no other grounds are authorized.

IPR2014-01363 Patent RE 44,453 E

# For PETITIONER:

E. Robert Yoches
Joshua L. Goldberg
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
bob.yoches@finnegan.com
joshua.goldberg@finnegan.com

# For PATENT OWNER:

Stephen R. Schaefer Timothy W. Riffe FISH & RICHARDSON P.C. schaefer@fr.com riffe@fr.com