

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FISHER & PAYKEL HEALTHCARE LIMITED,
Petitioner,

v.

RESMED LIMITED,
Patent Owner.

Case No. TBD
U.S. Patent No. 9,119,931

**DECLARATION OF FIONA CRESSWELL, IN SUPPORT OF
PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 9,119,931**

Fisher & Paykel Healthcare Ltd. v. ResMed Ltd.

Declaration of Fiona Cresswell re IPR Petition – U.S. Patent No. 9,119,931

I, Fiona Cresswell hereby declare as follows:

1. I am currently employed at Fisher & Paykel Healthcare Limited (“Fisher & Paykel”) as a General Manager of Marketing Operations. I have been employed by Fisher & Paykel since 2001. I took on my current position as a General Manager of Marketing Operations earlier this year. During my years as an employee at Fisher & Paykel, I have been responsible for marketing Fisher & Paykel’s CPAP products.

2. In my employment at Fisher & Paykel, I have gained personal knowledge and intimate familiarity with numerous Fisher & Paykel product brochures and instructions for use (“IFUs”), including those published during the 2006 time frame.

3. In 2006, it was Fisher & Paykel’s standard practice to distribute product brochures and IFUs to customers, potential customers, business partners, and alliances. Each document was published with a document control number and revision letter. I personally reviewed and approved numerous Fisher & Paykel published product brochures and IFUs during the 2006 time frame and facilitated distribution of those documents to customers and prospective customers via a team of global sales representatives.

4. In 2006, Fisher & Paykel's published product manuals and IFUs were made available to the general public through Fisher & Paykel's website. The website, in its updated form still exists today at www.fphcare.com.

5. In 2006, Fisher & Paykel's website featured webpages describing the features, functions, and benefits of many of its products. These webpages marketed Fisher & Paykel's products to the general public and served as an information source to support Fisher & Paykel's customers, potential customers, business partners, and alliances. To satisfy these marketing and support purposes, Fisher & Paykel made .PDF files of the most recent marketing materials and IFUs for its products available for public download by visitors to the website through hyperlinks on the product webpages. I have personally directed customers, potential customers, business partners, alliances, and others to Fisher & Paykel's website when they asked for additional information. In 2006, I also accessed Fisher & Paykel's website myself and accessed the brochures and IFUs on the product webpages.

6. Attached hereto as Appendix 1 is the Affidavit of Christopher Butler, dated September 6, 2016, and including Exhibit A.

7. Fisher & Paykel maintained a webpage for its Flexifit™ 431 product in 2006. The webpage for the Flexifit™ 431 product was found at www.fphcare.com/osa/flexiFit431.asp. The webpage shown on Page 4 of

Fisher & Paykel Healthcare Ltd. v. ResMed Ltd.

Declaration of Fiona Cresswell re IPR Petition – U.S. Patent No. 9,119,931

Appendix 1 is the webpage for the Flexifit™ 431, as it looked in the October 2006 time frame. I personally oversaw posting of the FlexiFit™ marketing materials and IFUs to the Flexifit™ webpages. As shown on the left hand side of the webpage shown on Page 4 of Appendix 1, there were icons or hyperlinks on which a visitor could click to access .PDF files of the Multi-language User Instructions (IFUs) and the Product Brochure for the Flexifit™ 431 product.

8. Pages 6 and 7 of Appendix 1 comprise the product brochure that was available on the FlexiFit™ 431 webpage in the October 2006 time frame. This document was published during my time at Fisher & Paykel and was uploaded to the FlexiFit® 431 webpage before October 2006. I have personal knowledge of and recognize this brochure on pages 6 and 7 of Appendix 1 and confirm that the document control number and revision letter published thereon (185043533 RevB) indicate that this brochure was the current revision as of May 19, 2005.

9. Pages 9 and 10 of Appendix 1 comprise the IFUs that were available on the FlexiFit™ 431 webpage in the October 2006 time frame. This document was published during my time at Fisher & Paykel and was uploaded to the FlexiFit® 431 webpage before October 2006. I have personal knowledge of and recognize these IFUs on pages 9 and 10 of Appendix 1 and confirm that the document control number and revision letter published thereon (185 043 239 Rev E) indicate that these IFUs were the current revision as of April 6, 2005.

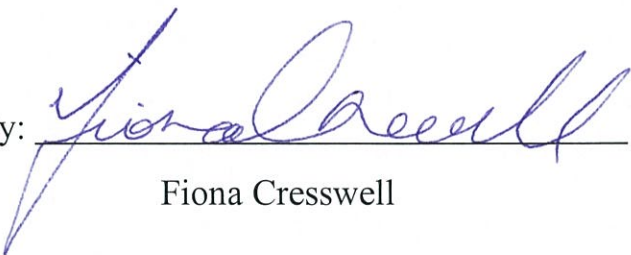
Fisher & Paykel Healthcare Ltd. v. ResMed Ltd.

Declaration of Fiona Cresswell re IPR Petition – U.S. Patent No. 9,119,931

10. Pages 12–23 of Appendix 1 comprise another product brochure that was available on the Fisher & Paykel website in the October 2006 time frame. This document was published during my time at Fisher & Paykel and was uploaded to the Fisher & Paykel website before October 2006. I have personal knowledge of and recognize this brochure on pages 12–23 of Appendix 1 and confirm that the document control number and revision letter published thereon (185043711RevB) indicate that this brochure was the current revision as of August 18, 2005.

I declare that all statements made herein of my own knowledge are true and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on September 21st 2016 at Auckland, New Zealand.

By: 
Fiona Cresswell

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