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FISHER & PAYKEL HEALTHCARE LIMITED

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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12

13

FISHER & PAYKEL
14 HEALTHCARE LIMITED, a New
Zealand corporation

15
16 Plaintiff,

17 v.

18 RESMED CORP., a Minnesota
corporation,

19 Defendant.
20

Case No. '16CV2068 GPC WVG

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Fisher & Paykel Healthcare Limited (“Plaintiff” or “Fisher &
2 Paykel Healthcare”) hereby complains of Defendant ResMed Corp.
3 (“Defendant” or “ResMed”) and alleges as follows:

4 **I. THE PARTIES**

5 1. Plaintiff Fisher & Paykel Healthcare Limited is a New Zealand
6 corporation having a principal place of business at 15 Maurice Paykel Place,
7 East Tamaki, Auckland 2013, PO Box 14 348, Panmure, Auckland, New
8 Zealand.

9 2. Upon information and belief, Defendant ResMed Corp. is a
10 corporation organized under the laws of the state of Minnesota with its principal
11 place of business in this district at 9001 Spectrum Center Boulevard, San Diego,
12 California.

13 **II. JURISDICTION AND VENUE**

14 3. Fisher & Paykel Healthcare repeats, realleges, and incorporates by
15 reference the allegations set forth in Paragraphs 1-2 of this Complaint.

16 4. Fisher & Paykel Healthcare Inc. is a California corporation having
17 a principal place of business in Irvine, CA.

18 5. With the authorization of Fisher & Paykel Healthcare Limited,
19 Fisher & Paykel Healthcare Inc. sells in the United States products covered by
20 one or more of the patents asserted herein.

21 6. This is a civil action for patent infringement arising under the
22 patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, more particularly, 35
23 U.S.C. §§ 271 and 281.

24 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
25 §§ 1331 and 1338(a).

26 8. ResMed resides in California and is subject to personal jurisdiction
27 in California, and has committed the acts complained of in this Judicial District.
28

1 9. Venue is proper in this Judicial District pursuant to 28 U.S.C.
2 §§ 1391(b), (c), and 1400(b).

3 **III. THE PATENTS-IN-SUIT**

4 10. Fisher & Paykel Healthcare Limited is the owner by assignment of
5 U.S. Patent 8,443,807 entitled “Breathing Assistance Apparatus” (“the ’807
6 patent”), which the United States Patent and Trademark Office lawfully and
7 duly issued on May 21, 2013. A true and correct copy of the ’807 patent is
8 attached hereto as Exhibit 1.

9 11. Fisher & Paykel Healthcare Limited is the owner by assignment of
10 U.S. Patent 8,479,741 entitled “Breathing Assistance Apparatus” (“the ’741
11 patent”), which the United States Patent and Trademark Office lawfully and
12 duly issued on July 9, 2013. A true and correct copy of the ’741 patent is
13 attached hereto as Exhibit 2.

14 12. Fisher & Paykel Healthcare Limited is the owner by assignment of
15 U.S. Patent 8,186,345 entitled “Apparatus for Supplying Gases to a Patient”
16 (“the ’345 patent”), which the United States Patent and Trademark Office
17 lawfully and duly issued on May 29, 2012. A true and correct copy of the ’345
18 patent is attached hereto as Exhibit 3.

19 13. Fisher & Paykel Healthcare Limited is the owner by assignment of
20 U.S. Patent 8,453,641 entitled “Apparatus For Measuring Properties of Gases
21 Supplied to a Patient” (“the ’641 patent”), which the United States Patent and
22 Trademark Office lawfully and duly issued on June 4, 2013. A true and correct
23 copy of the ’641 patent is attached hereto as Exhibit 4.

24 14. Fisher & Paykel Healthcare Limited is the owner by assignment of
25 U.S. Patent 9,265,902 entitled “Apparatus For Measuring Properties of Gases
26 Supplied to a Patient” (“the ’902 patent”), which the United States Patent and
27 Trademark Office lawfully and duly issued on February 23, 2016. A true and
28 correct copy of the ’902 patent is attached hereto as Exhibit 5.

1 15. Fisher & Paykel Healthcare Limited is the owner by assignment of
2 U.S. Patent 8,550,072 entitled “Apparatus for Delivering Humidified Gases”
3 (“the ’072 patent”), which the United States Patent and Trademark Office
4 lawfully and duly issued on October 8, 2013. A true and correct copy of the
5 ’072 patent is attached hereto as Exhibit 6.

6 16. Fisher & Paykel Healthcare Limited is the owner by assignment of
7 U.S. Patent 8,091,547 entitled “Apparatus for Delivering Humidified Gases”
8 (“the ’547 patent”), which the United States Patent and Trademark Office
9 lawfully and duly issued on January 10, 2012. A true and correct copy of the
10 ’547 patent is attached hereto as Exhibit 7.

11 17. Fisher & Paykel Healthcare Limited is the owner by assignment of
12 U.S. Patent 7,111,624 entitled “Apparatus for Delivering Humidified Gases”
13 (“the ’624 patent”), which the United States Patent and Trademark Office
14 lawfully and duly issued on September 26, 2006. A true and correct copy of the
15 ’624 patent is attached hereto as Exhibit 8.

16 18. Fisher & Paykel Healthcare Limited is the owner by assignment of
17 U.S. Patent 6,398,197 entitled “Water Chamber” (“the ’197 patent”), which the
18 United States Patent and Trademark Office lawfully and duly issued on June 4,
19 2002. A true and correct copy of the ’197 patent is attached hereto as Exhibit 9.

20 **IV. DEFENDANTS’ ACTIVITIES**

21 19. Upon information and belief, ResMed has made, used, offered to
22 sell, and/or sold within the United States, and/or has imported into the United
23 States, products including at least Continuous Positive Airway Pressure
24 (“CPAP”) machines such as ResMed’s AirSense 10 Series, including, without
25 limitation, ResMed AirSense 10 AutoSet, Airsense 10 AutoSet for Her,
26 AirSense 10 CPAP, and AirSense 10 Elite (collectively, “S10 CPAP”).

27 20. Upon further information and belief, ResMed has made, used,
28 offered to sell, and/or sold within the United States, and/or has imported into the

1 United States, products including at least the AirCurve 10 ASV, AirCurve 10 S,
2 AirCurve 10 VAuto, and AirCurve 10 ST (collectively, “AirCurve 10”).

3 21. Upon further information and belief, ResMed has made, used,
4 offered to sell, and/or sold within the United States, and/or has imported into the
5 United States, ClimateLineAir heated air tubing for use with at least the S10
6 CPAP products.

7 22. Upon further information and belief, ResMed has made, used,
8 offered to sell, and/or sold within the United States, and/or has imported into the
9 United States, nasal pillow masks, including the Swift FX and the Swift LT
10 masks.

11 **V. CLAIMS FOR PATENT INFRINGEMENT**

12 **FIRST CLAIM FOR RELIEF**

13 **(Infringement of U.S. Patent No. 8,443,807)**

14 23. Fisher & Paykel Healthcare realleges and reincorporates the
15 allegations set forth in paragraphs 1 through 22.

16 24. Upon information and belief, ResMed products, including at least
17 the Swift FX products, infringe at least Claims 1, 2, 4, 6, 8, 17, 20, and 21 of the
18 ’807 patent under at least 35 U.S.C. § 271(a), (b), and (c).

19 25. Upon information and belief, ResMed has directly infringed one or
20 more claims of the ’807 patent through manufacture use, sale, offer for sale,
21 and/or importation into the United States of masks, including the Swift FX
22 masks.

23 26. For example, upon information and belief, the Swift FX mask
24 includes all of the limitations of Claim 1 of the ’807 patent. The Swift FX mask
25 is a patient interface that includes a mask assembly with a mask body sized and
26 shaped to leave the mouth of the user uncovered by the mask when in use. Two
27 nasal pillows extend from the mask body, and in use these nasal pillows rest in a
28 substantially sealed manner against the openings of the nasal cavity of the user.

1 There is a ring engaging the mask body, an elbow rotatably engaged with the
2 ring comprising a plurality of vent holes, a tube or conduit extending from the
3 elbow, and a headgear assembly having two side straps that pass down the
4 cheeks to secure the mask body to a face of a user. The headgear assembly also
5 includes a top strap with a buckle to facilitate length adjustment of the top strap
6 and a back strap adjustably connected to at least the top strap or the two side
7 straps. The two side straps are configured to connect and disconnect with the
8 mask assembly while the elbow remains rotatably engaged with the ring and the
9 ring remains engaged with the mask body. The mask assembly is configured to
10 connect to the two side straps, and the top strap connects only with one or more
11 of the side straps and the back strap.

12 27. ResMed is aware of the '807 patent, at least in part through written
13 communications from Fisher & Paykel Healthcare on or about February 27,
14 2015 notifying ResMed of its infringement of this patent.

15 28. Upon information and belief, ResMed has actively induced others
16 to infringe the '807 patent by marketing and selling the above masks, knowing
17 and intending that such masks would be used by customers and end users in a
18 manner that infringes the '807 patent. To that end, ResMed provides
19 instructions and teachings to its customers and end users that such masks be
20 used to infringe the '807 patent. ResMed's acts constitute infringement of the
21 '807 patent in violation of 35 U.S.C. § 271(b).

22 29. Upon information and belief, ResMed actively induces health-care
23 service providers and users to directly infringe the asserted claims of the '807
24 patent. By way of example only, upon information and belief, ResMed actively
25 induces direct infringement of the '807 patent by providing directions,
26 demonstrations, guides, manuals, training for use, and/or other materials
27 necessary for the use, refurbishing, and/or servicing of the Swift FX masks.
28

1 Upon information and belief, ResMed knew or should have known that these
2 activities would cause direct infringement.

3 30. Upon information and belief, ResMed's acts constitute contributory
4 infringement of the '807 patent in violation of 35 U.S.C. § 271(c). Upon
5 information and belief, ResMed contributorily infringes because, among other
6 things, ResMed offers to sell and/or sells within the United States, and/or
7 imports into the United States, components of the Swift FX masks that
8 constitute material parts of the invention of the asserted claims of the '807
9 patent, are not staple articles or commodities of commerce suitable for
10 substantial non-infringing use, and are known by ResMed to be especially made
11 or especially adapted for use in an infringement of the '807 patent.

12 31. Upon information and belief, ResMed's infringement of the '807
13 patent has been, and continues to be, willful, deliberate, and intentional by
14 continuing its acts of infringement after becoming aware of the '807 patent and
15 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
16 Healthcare's patent rights.

17 32. As a consequence of ResMed's infringement of the '807 patent,
18 Fisher & Paykel Healthcare has suffered and will continue to suffer irreparable
19 harm and injury, including monetary damages in an amount to be determined at
20 trial.

21 33. Upon information and belief, unless enjoined, ResMed, and/or
22 others acting on behalf of ResMed, will continue their infringing acts, thereby
23 causing additional irreparable injury to Fisher & Paykel Healthcare for which
24 there is no adequate remedy at law.

25 **SECOND CLAIM FOR RELIEF**

26 **(Infringement of U.S. Patent No. 8,479,741)**

27 34. Fisher & Paykel Healthcare realleges and reincorporates the
28 allegations set forth in paragraphs 1 through 33.

1 35. Upon information and belief, ResMed products, including at least
2 the Swift LT masks, infringe at least Claims 1-3, 16, 17, 34, and 35 of the '741
3 patent under 35 U.S.C. § 271(a), (b), or (c).

4 36. Upon information and belief, ResMed has directly infringed one or
5 more claims of the '741 patent through manufacture use, sale, offer for sale,
6 and/or importation into the United States of the Swift LT masks.

7 37. For example, upon information and belief, the Swift LT mask
8 includes all of the limitations of Claim 1 of the '741 patent. The Swift LT mask
9 is a patient interface that includes a mask body comprising a substantially
10 flexible plastics material and having two nasal pillows angled toward one
11 another. Each of the nasal pillows has a generally conical portion, a generally
12 cylindrical portion, and an outlet opening. The mask body also includes an inlet
13 opening that is spaced apart from the outlet openings on the nasal pillows and
14 that is within a generally tubular portion of the mask body.

15 38. Upon information and belief, the Swift LT mask also includes a
16 mask base having a plastics material that is less flexible than the plastics
17 material of the mask body. The mask base has a housing with a through
18 passage, and a proximal portion of the through passage is surrounded by a
19 recess. The recess receives the generally tubular portion of the mask body that
20 defines the mask body inlet opening. Two side arms are removably connected
21 to the mask base, and each side arm is three-dimensionally molded and has a
22 varying cross-sectional thickness.

23 39. Upon information and belief, the Swift LT mask includes headgear
24 with two side straps of a composite foam material. Each side arm overlaps with
25 and is secured to one of the side straps, and the side strap extends only partially
26 along the side arm to which it is secured.

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1 40. ResMed is aware of the '741 patent, at least in part through written
2 communications from Fisher & Paykel Healthcare on or about February 27,
3 2015 notifying ResMed of its infringement of this patent.

4 41. Upon information and belief, ResMed has actively induced others
5 to infringe the '741 patent. ResMed's acts constitute infringement of the
6 '741 patent in violation of 35 U.S.C. § 271(b).

7 42. Upon information and belief, ResMed actively induces health-care
8 service providers and users to directly infringe the asserted claims of the '741
9 patent. By way of example only, upon information and belief, ResMed actively
10 induces direct infringement of the '741 patent by providing directions,
11 demonstrations, guides, manuals, training for use, and/or other materials
12 necessary for the use, refurbishing, and/or servicing of the Swift LT masks.
13 Upon information and belief, ResMed knew or should have known that these
14 activities would cause direct infringement.

15 43. Upon information and belief, ResMed's acts constitute contributory
16 infringement of the '741 patent in violation of 35 U.S.C. § 271(c). Upon
17 information and belief, ResMed contributorily infringes because, among other
18 things, ResMed offers to sell and/or sells within the United States, and/or
19 imports into the United States, components of the Swift LT masks that
20 constitute material parts of the invention of the asserted claims of the '741
21 patent, are not staple articles or commodities of commerce suitable for
22 substantial non-infringing use, and are known by ResMed to be especially made
23 or especially adapted for use in an infringement of the '741 patent.

24 44. Upon further information and belief, such components are used by
25 ResMed in connection with the refurbishing, servicing and/or use of infringing
26 Swift LT masks in the United States, thereby constituting direct infringement of
27 the asserted claims of the '741 patent.

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1 45. Upon information and belief, ResMed's infringement of the '741
2 patent has been, and continues to be, willful, deliberate, and intentional by
3 continuing its acts of infringement after becoming aware of the '741 patent and
4 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
5 Healthcare's patent rights.

6 46. As a consequence of ResMed's infringement of the '741 patent,
7 Fisher & Paykel Healthcare has suffered and will continue to suffer irreparable
8 harm and injury, including monetary damages in an amount to be determined at
9 trial.

10 47. Upon information and belief, unless enjoined, ResMed, and/or
11 others acting on behalf of ResMed, will continue their infringing acts, thereby
12 causing additional irreparable injury to Fisher & Paykel Healthcare for which
13 there is no adequate remedy at law.

14 **THIRD CLAIM FOR RELIEF**

15 **(Infringement of U.S. Patent No. 8,186,345)**

16 48. Fisher & Paykel Healthcare realleges and reincorporates the
17 allegations set forth in paragraphs 1 through 47.

18 49. Upon information and belief, ResMed products, including at least
19 the S10 CPAP, AirCurve 10, and ClimateLineAir products, infringe at least
20 Claims 1 and 3 of the '345 patent under 35 U.S.C. § 271(a), (b), or (c).

21 50. Upon information and belief, ResMed has directly infringed the
22 asserted claims of the '345 patent through manufacture use, sale, offer for sale,
23 and/or importation into the United States of the S10 CPAP, AirCurve 10, and
24 ClimateLineAir products.

25 51. For example, upon information and belief, the AirSense 10 with
26 ClimateLine Air tubing includes all of the limitations of Claim 1 of the '345
27 patent. Upon information and belief, the AirSense 10 with Climate Line Air
28 tubing is an apparatus for supplying gases to a patient. It includes a gases

1 supply and a tube with a heater wire for heating the conduit. The heater wire is
2 located around the outside of the tube. The circuitry of the ClimateLine Air
3 tube includes a thermistor, which has a characteristic impedance. The user
4 manual for the AirSense 10 indicates that this device has a controller for
5 controlling the heating of the heater wire. The controller can automatically
6 identify the conduit attached by using the resistance from the thermistor at room
7 temperature to determine the type of delivery conduit attached.

8 52. ResMed is aware of the '345 patent, at least in part through written
9 communications from Fisher & Paykel Healthcare on or about February 22,
10 2016 notifying ResMed of its infringement of this patent.

11 53. Upon information and belief, ResMed has actively induced others
12 to infringe the '345 patent. ResMed's acts constitute infringement of the
13 '345 patent in violation of 35 U.S.C. § 271(b).

14 54. Upon information and belief, ResMed actively induces health-care
15 service providers and users to directly infringe the asserted claims of the '345
16 patent. By way of example only, upon information and belief, ResMed actively
17 induces direct infringement of the '345 patent by providing directions,
18 demonstrations, guides, manuals, training for use, and/or other materials
19 necessary for the use, refurbishing, and/or servicing of the S10 CPAP,
20 AirCurve 10, and ClimateLineAir products.

21 55. Upon information and belief, ResMed knew or should have known
22 that these activities would cause direct infringement.

23 56. Upon information and belief, ResMed's acts constitute contributory
24 infringement of the '345 patent in violation of 35 U.S.C. § 271(c). Upon
25 information and belief, ResMed contributorily infringes because, among other
26 things, ResMed offers to sell and/or sells within the United States, and/or
27 imports into the United States, components of the S10 CPAP, AirCurve 10, and
28 ClimateLineAir products that constitute material parts of the invention of the

1 asserted claims of the '345 patent, are not staple articles or commodities of
2 commerce suitable for substantial non-infringing use, and are known by
3 ResMed to be especially made or especially adapted for use in an infringement
4 of the '345 patent.

5 57. Upon further information and belief, such components are used by
6 ResMed in connection with the refurbishing, servicing and/or use of infringing
7 S10 CPAP, AirCurve 10, and ClimateLineAir products in the United States,
8 thereby constituting direct infringement of the asserted claims of the '345
9 patent.

10 58. Upon information and belief, ResMed's infringement of the '345
11 patent has been, and continues to be, willful, deliberate, and intentional by
12 continuing its acts of infringement after becoming aware of the '345 patent and
13 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
14 Healthcare's patent rights.

15 59. As a consequence of ResMed's patent infringement of the '345
16 patent, Fisher & Paykel Healthcare has suffered and will continue to suffer
17 irreparable harm and injury, including monetary damages in an amount to be
18 determined at trial.

19 60. Upon information and belief, unless enjoined, ResMed, and/or
20 others acting on behalf of ResMed, will continue their infringing acts, thereby
21 causing additional irreparable injury to Fisher & Paykel Healthcare for which
22 there is no adequate remedy at law.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Infringement of U.S. Patent No. 8,453,641)**

25 61. Fisher & Paykel Healthcare realleges and reincorporates the
26 allegations set forth in paragraphs 1 through 60.

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1 62. Upon information and belief, ResMed products, including at least
2 the S10 CPAP, AirCurve 10, and ClimateLineAir products, infringe at least
3 Claims 1 5, and 6 of the '641 patent under 35 U.S.C. § 271(a), (b), or (c).

4 63. Upon information and belief, ResMed has directly infringed the
5 asserted claims of the '641 patent through manufacture use, sale, offer for sale,
6 and/or importation into the United States of the S10 CPAP, AirCurve 10, and
7 ClimateLineAir products.

8 64. For example, upon information and belief, the AirSense 10 with
9 ClimateLine Air tubing includes all of the limitations of Claim 1 of the '641
10 patent. The AirSense 10 is an apparatus for measuring the properties of gases
11 being supplied to a patient. It includes a gases supply and a tube that includes a
12 heater wire for heating the tube. The heater wire is located around the outside
13 of the tube. The tube has two ends, and the heater wire extends longitudinally
14 along the tube from the first end to the second end of the tube. The heater wire
15 forms part of the circuit of the AirSense 10 device and is measured by a
16 controller to determine properties of the gases, including temperature and/or
17 relative humidity. The electrical circuit has two portions, one that is located
18 near the first end of the tube and the other that is located near the second end of
19 the tube. The two portions of the electrical circuit are in electrical
20 communication with each other through a thermistor that is electrically
21 connected to the contacts at the gases supply end of the electrical circuit. The
22 change in current from the thermistor is used to determine temperature of the
23 gases as it varies.

24 65. ResMed is aware of the '641 patent, at least in part through written
25 communications from Fisher & Paykel Healthcare on or about February 22,
26 2016 notifying ResMed of its infringement of this patent.

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1 66. Upon information and belief, ResMed has actively induced others
2 to infringe the '641 patent. ResMed's acts constitute infringement of the
3 '641 patent in violation of 35 U.S.C. § 271(b).

4 67. Upon information and belief, ResMed actively induces health-care
5 service providers and users to directly infringe the asserted claims of the '641
6 patent. By way of example only, upon information and belief, ResMed actively
7 induces direct infringement of the '641 patent by providing directions,
8 demonstrations, guides, manuals, training for use, and/or other materials
9 necessary for the use, refurbishing, and/or servicing of the S10 CPAP,
10 AirCurve 10, and ClimateLineAir products.

11 68. Upon information and belief, ResMed knew or should have known
12 that these activities would cause direct infringement.

13 69. Upon information and belief, ResMed's acts constitute contributory
14 infringement of the '641 patent in violation of 35 U.S.C. § 271(c). Upon
15 information and belief, ResMed contributorily infringes because, among other
16 things, ResMed offers to sell and/or sells within the United States, and/or
17 imports into the United States, components of the S10 CPAP, AirCurve 10, and
18 ClimateLineAir products that constitute material parts of the invention of the
19 asserted claims of the '641 patent, are not staple articles or commodities of
20 commerce suitable for substantial non-infringing use, and are known by
21 ResMed to be especially made or especially adapted for use in an infringement
22 of the '641 patent.

23 70. Upon further information and belief, such components are used by
24 ResMed in connection with the refurbishing, servicing and/or use of infringing
25 S10 CPAP, AirCurve 10, and ClimateLineAir products in the United States,
26 thereby constituting direct infringement of the asserted claims of the '641
27 patent.

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1 71. Upon information and belief, ResMed's infringement of the '641
2 patent has been, and continues to be, willful, deliberate, and intentional by
3 continuing its acts of infringement after becoming aware of the '641 patent and
4 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
5 Healthcare's patent rights.

6 72. As a consequence of ResMed's patent infringement of the '641
7 patent, Fisher & Paykel Healthcare has suffered and will continue to suffer
8 irreparable harm and injury, including monetary damages in an amount to be
9 determined at trial.

10 73. Upon information and belief, unless enjoined, ResMed, and/or
11 others acting on behalf of ResMed, will continue their infringing acts, thereby
12 causing additional irreparable injury to Fisher & Paykel Healthcare for which
13 there is no adequate remedy at law.

14 **FIFTH CLAIM FOR RELIEF**

15 **(Infringement of U.S. Patent No. 9,265,902)**

16 74. Fisher & Paykel Healthcare realleges and reincorporates the
17 allegations set forth in paragraphs 1 through 73.

18 75. Upon information and belief, ResMed products, including at least
19 the S10 CPAP, AirCurve 10, and ClimateLineAir products, infringe at least
20 Claims 7, 11, and 12 of the '902 patent under 35 U.S.C. § 271(a), (b), or (c).

21 76. Upon information and belief, ResMed has directly infringed the
22 asserted claims of the '902 patent through manufacture use, sale, offer for sale,
23 and/or importation into the United States of the S10 CPAP, AirCurve 10, and
24 ClimateLineAir products.

25 77. For example, upon information and belief, the AirSense 10 with
26 ClimateLine Air includes all of the limitations of Claim 7 of the '902 patent.
27 The AirSense 10 is configured to supply a stream of gases to a patient. It
28 includes a gases supply, a tube configured to connect to the gases supply and to

1 deliver the stream of gases to the patient, and a heater wire extending through a
2 length of the tube. An electrical circuit connected to the wire includes a
3 thermistor, and current flows through the thermistor and wire to a controller.
4 Based on the current, the controller can determine at least the temperature of the
5 gases and can adjust for patient comfort or therapeutic setting. The thermistor is
6 positioned within the stream of gases. An overmolding encloses part of the
7 electrical circuit and extends into the middle of the tube.

8 78. ResMed is aware of the '902 patent, at least in part through written
9 communications from Fisher & Paykel Healthcare on or about February 22,
10 2016 notifying ResMed of its infringement of this patent.

11 79. Upon information and belief, ResMed has actively induced others
12 to infringe the '902 patent. ResMed's acts constitute infringement of the
13 '902 patent in violation of 35 U.S.C. § 271(b).

14 80. Upon information and belief, ResMed actively induces health-care
15 service providers and users to directly infringe the asserted claims of the '902
16 patent. By way of example only, upon information and belief, ResMed actively
17 induces direct infringement of the '902 patent by providing directions,
18 demonstrations, guides, manuals, training for use, and/or other materials
19 necessary for the use, refurbishing, and/or servicing of the S10 CPAP,
20 AirCurve 10, and ClimateLineAir products.

21 81. Upon information and belief, ResMed knew or should have known
22 that these activities would cause direct infringement.

23 82. Upon information and belief, ResMed's acts constitute contributory
24 infringement of the '902 patent in violation of 35 U.S.C. § 271(c). Upon
25 information and belief, ResMed contributorily infringes because, among other
26 things, ResMed offers to sell and/or sells within the United States, and/or
27 imports into the United States, components of the S S10 CPAP, AirCurve 10,
28 and ClimateLineAir products that constitute material parts of the invention of

1 the asserted claims of the '902 patent, are not staple articles or commodities of
2 commerce suitable for substantial non-infringing use, and are known by
3 ResMed to be especially made or especially adapted for use in an infringement
4 of the '902 patent.

5 83. Upon further information and belief, such components are used by
6 ResMed in connection with the refurbishing, servicing and/or use of infringing
7 S10 CPAP, AirCurve 10, and ClimateLineAir products in the United States,
8 thereby constituting direct infringement of the asserted claims of the '902
9 patent.

10 84. Upon information and belief, ResMed's infringement of the '902
11 patent has been, and continues to be, willful, deliberate, and intentional by
12 continuing its acts of infringement after becoming aware of the '902 patent and
13 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
14 Healthcare's patent rights.

15 85. As a consequence of ResMed's patent infringement of the '902
16 patent, Fisher & Paykel Healthcare has suffered and will continue to suffer
17 irreparable harm and injury, including monetary damages in an amount to be
18 determined at trial.

19 86. Upon information and belief, unless enjoined, ResMed, and/or
20 others acting on behalf of ResMed, will continue their infringing acts, thereby
21 causing additional irreparable injury to Fisher & Paykel Healthcare for which
22 there is no adequate remedy at law.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Infringement of U.S. Patent No. 8,550,072)**

25 87. Fisher & Paykel Healthcare realleges and reincorporates the
26 allegations set forth in paragraphs 1 through 86.

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1 88. Upon information and belief, ResMed products, including at least
2 the S10 CPAP and AirCurve 10 products, infringe at least Claims 6, 12, and 13
3 of the '072 patent under 35 U.S.C. § 271(a), (b), or (c).

4 89. Upon information and belief, ResMed has directly infringed the
5 asserted claims of the '072 patent through the manufacture, use, sale, offer for
6 sale, and/or importation into the United States of the S10 CPAP and AirCurve
7 10 products.

8 90. For example, upon information and belief, the AirSense 10 includes
9 all of the limitations of Claim 6 of the '072 patent. The AirSense 10 is an
10 apparatus for use in humidified gases delivery treatment. It includes a blower
11 for generating a supply of pressurised gases. It includes a pressurised gases
12 outlet in fluid connection with the pressurised gases supply and adapted to make
13 a separate fluid connection with an inlet of a water chamber to provide gases
14 flow to the chamber. It includes a humidified gases return adapted to make a
15 separate fluid connection with an outlet of the water chamber in order to receive
16 humidified gases from the water chamber, and it is adjacent to and aligned with
17 the pressurised gases outlet. These two fluid connections are made by a single
18 motion. The AirSense 10 also includes a patient outlet in fluid connection with
19 the humidified gases return to receive humidified gases from the humidified
20 gases return and to provide humidified gases to the patient outlet. This patient
21 outlet is in fluid connection with or adapted to make fluid connection with a
22 breathing conduct for delivery of humidified gases to a patient.

23 91. ResMed is aware of the '072 patent, at least in part through written
24 communications from Fisher & Paykel Healthcare on or about October 1, 2015
25 notifying ResMed of its infringement of this patent.

26 92. Upon information and belief, ResMed has actively induced others
27 to infringe the '072 patent. ResMed's acts constitute infringement of the
28 '072 patent in violation of 35 U.S.C. § 271(b).

1 93. Upon information and belief, ResMed actively induces health-care
2 service providers and users to directly infringe the asserted claims of the
3 '072 patent. By way of example only, upon information and belief, ResMed
4 actively induces direct infringement of the '072 patent by providing directions,
5 demonstrations, guides, manuals, training for use, and/or other materials
6 necessary for the use, refurbishing, and/or servicing of S10 CPAP and AirCurve
7 10 products.

8 94. Upon information and belief, ResMed knew or should have known
9 that these activities would cause direct infringement.

10 95. Upon information and belief, ResMed's acts constitute contributory
11 infringement of the '072 patent in violation of 35 U.S.C. § 271(c). Upon
12 information and belief, ResMed contributorily infringes because, among other
13 things, ResMed offers to sell and/or sells within the United States, and/or
14 imports into the United States, components of S10 CPAP and AirCurve 10
15 products that constitute material parts of the invention of the asserted claims of
16 the '072 patent, are not staple articles or commodities of commerce suitable for
17 substantial non-infringing use, and are known by ResMed to be especially made
18 or especially adapted for use in an infringement of the '072 patent.

19 96. Upon further information and belief, such components are used by
20 ResMed in connection with the refurbishing, servicing and/or use of infringing
21 S10 CPAP and AirCurve 10 products in the United States, thereby constituting
22 direct infringement of the asserted claims of the '072 patent.

23 97. Upon information and belief, ResMed's infringement of the '072
24 patent has been, and continues to be, willful, deliberate, and intentional by
25 continuing its acts of infringement after becoming aware of the '072 patent and
26 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
27 Healthcare's patent rights.

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1 98. As a consequence of ResMed's patent infringement of the '072
2 patent, Fisher & Paykel Healthcare has suffered and will continue to suffer
3 irreparable harm and injury, including monetary damages in an amount to be
4 determined at trial.

5 99. Upon information and belief, unless enjoined, ResMed, and/or
6 others acting on behalf of ResMed, will continue their infringing acts, thereby
7 causing additional irreparable injury to Fisher & Paykel Healthcare for which
8 there is no adequate remedy at law.

9 **SEVENTH CLAIM FOR RELIEF**

10 **(Infringement of U.S. Patent No. 8,091,547)**

11 100. Fisher & Paykel Healthcare realleges and reincorporates the
12 allegations set forth in paragraphs 1 through 99.

13 101. Upon information and belief, ResMed products, including at least
14 the S10 CPAP and AirCurve 10 products, infringe at least Claims 24 and 25 of
15 the '547 patent under 35 U.S.C. § 271(a), (b), or (c).

16 102. Upon information and belief, ResMed has directly infringed the
17 asserted claims of the '547 patent through the manufacture, use, sale, offer for
18 sale, and/or importation into the United States of the S10 CPAP and AirCurve
19 10 products.

20 103. For example, upon information and belief, the AirSense 10 includes
21 all of the limitations of Claim 24 of the '547 patent. The AirSense 10 is a gas
22 humidification apparatus. It includes a humidification chamber with a base. It
23 has a housing with a source gases outlet adapted to make a separable fluid
24 connection with an inlet of the humidification chamber in order to provide gases
25 flow into the humidification chamber. The housing also has a humidified gases
26 inlet adapted to make a separable fluid connection with an outlet of the
27 humidification chamber in order to receive humidified gases from the
28 humidification chamber. The humidified gases outlet is in fluid communication

1 with the humidified gases inlet and is adapted to make fluid connection with a
2 breathing conduit for delivery of humidified gases to a patient. The housing
3 also includes a heater configured to vaporize liquid water in the humidification
4 chamber to provide water vapor to gases flowing through the humidification
5 chamber. The housing is adapted to accommodate the humidification chamber,
6 which is removable and engageable with the housing via a single motion. The
7 single motion of engagement disposes the base of the humidification chamber
8 adjacent the heater. The single motion also makes or breaks the separable
9 connection between the source gases outlet and the humidification chamber inlet
10 and the separable connection between the humidified gases inlet and the
11 humidification chamber outlet.

12 104. ResMed is aware of the '547 patent, at least in part through written
13 communications from Fisher & Paykel Healthcare on or about October 1, 2015
14 notifying ResMed of its infringement of this patent.

15 105. Upon information and belief, ResMed has actively induced others
16 to infringe the '547 patent. ResMed's acts constitute infringement of the
17 '547 patent in violation of 35 U.S.C. § 271(b).

18 106. Upon information and belief, ResMed actively induces health-care
19 service providers and users to directly infringe the asserted claims of the
20 '547 patent. By way of example only, upon information and belief, ResMed
21 actively induces direct infringement of the '547 patent by providing directions,
22 demonstrations, guides, manuals, training for use, and/or other materials
23 necessary for the use, refurbishing, and/or servicing of S10 CPAP and AirCurve
24 10 products.

25 107. Upon information and belief, ResMed knew or should have known
26 that these activities would cause direct infringement.

27 108. Upon information and belief, ResMed's acts constitute contributory
28 infringement of the '547 patent in violation of 35 U.S.C. § 271(c). Upon

1 information and belief, ResMed contributorily infringes because, among other
2 things, ResMed offers to sell and/or sells within the United States, and/or
3 imports into the United States, components of S10 CPAP and AirCurve 10
4 products that constitute material parts of the invention of the asserted claims of
5 the '547 patent, are not staple articles or commodities of commerce suitable for
6 substantial non-infringing use, and are known by ResMed to be especially made
7 or especially adapted for use in an infringement of the '547 patent.

8 109. Upon further information and belief, such components are used by
9 ResMed in connection with the refurbishing, servicing and/or use of infringing
10 S10 CPAP and AirCurve 10 products in the United States, thereby constituting
11 direct infringement of the asserted claims of the '547 patent.

12 110. Upon information and belief, ResMed's infringement of the
13 '547 patent has been, and continues to be, willful, deliberate, and intentional by
14 continuing its acts of infringement after becoming aware of the '547 patent and
15 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
16 Healthcare's patent rights.

17 111. As a consequence of ResMed's patent infringement of the
18 '547 patent, Fisher & Paykel Healthcare has suffered and will continue to suffer
19 irreparable harm and injury, including monetary damages in an amount to be
20 determined at trial.

21 112. Upon information and belief, unless enjoined, ResMed, and/or
22 others acting on behalf of ResMed, will continue their infringing acts, thereby
23 causing additional irreparable injury to Fisher & Paykel Healthcare for which
24 there is no adequate remedy at law.

25 **EIGHTH CLAIM FOR RELIEF**

26 **(Infringement of U.S. Patent No. 7,111,624)**

27 113. Fisher & Paykel Healthcare realleges and reincorporates the
28 allegations set forth in paragraphs 1 through 112.

114. Upon information and belief, ResMed products, including at least the S10 CPAP and AirCurve 10 products, infringe at least Claims 1-3 and 7 of the '624 patent under 35 U.S.C. § 271(a), (b), or (c).

115. Upon information and belief, ResMed has directly infringed the asserted claims of the '624 patent through the manufacture, use, sale, offer for sale, and/or importation into the United States of the S10 CPAP and AirCurve 10 products.

116. ResMed is aware of the '624 patent, at least in part through written communications from Fisher & Paykel Healthcare on or about October 1, 2015 notifying ResMed of its infringement of this patent.

117. For example, upon information and belief, the AirSense 10 includes all of the limitations of Claim 1 of the '624 patent. The AirSense 10 is an apparatus for use in humidified gases delivery treatment. It has a housing that has a pressurised gases supply within it. A pressurised gases outlet in the housing is in fluid connection with the pressurised gases supply and is adapted to make fluid connection with an inlet of a humidifier in order to provide gases flow to the humidifier. A humidified gases return in the housing is adapted to make fluid connection with an outlet of the humidifier in order to receive humidified gases from the humidifier. A patient outlet in the housing is in fluid connection with the humidified gases return in order to receive humidified gases and to provide humidified gases to the patient outlet. The patient outlet is in fluid communication with or adapted to make fluid connection with a breathing conduit for delivery of humidified gases to a patient.

118. Upon information and belief, ResMed has actively induced others to infringe the '624 patent. ResMed's acts constitute infringement of the '624 patent in violation of 35 U.S.C. § 271(b).

119. Upon information and belief, ResMed actively induces health-care service providers and users to directly infringe the asserted claims of the

1 '624 patent. By way of example only, upon information and belief, ResMed
2 actively induces direct infringement of the '624 patent by providing directions,
3 demonstrations, guides, manuals, training for use, and/or other materials
4 necessary for the use, refurbishing, and/or servicing of S10 CPAP and AirCurve
5 10 products.

6 120. Upon information and belief, ResMed knew or should have known
7 that these activities would cause direct infringement.

8 121. Upon information and belief, ResMed's acts constitute contributory
9 infringement of the '624 patent in violation of 35 U.S.C. § 271(c). Upon
10 information and belief, ResMed contributorily infringes because, among other
11 things, ResMed offers to sell and/or sells within the United States, and/or
12 imports into the United States, components of S10 CPAP and AirCurve 10
13 products that constitute material parts of the invention of the asserted claims of
14 the '624 patent, are not staple articles or commodities of commerce suitable for
15 substantial non-infringing use, and are known by ResMed to be especially made
16 or especially adapted for use in an infringement of the '624 patent.

17 122. Upon further information and belief, such components are used by
18 ResMed in connection with the refurbishing, servicing and/or use of infringing
19 S10 CPAP and AirCurve 10 products in the United States, thereby constituting
20 direct infringement of the asserted claims of the '624 patent.

21 123. Upon information and belief, ResMed's infringement of the
22 '624 patent has been, and continues to be, willful, deliberate, and intentional by
23 continuing its acts of infringement after becoming aware of the '624 patent and
24 its infringement thereof, thus acting in reckless disregard of Fisher & Paykel
25 Healthcare's patent rights.

26 124. As a consequence of ResMed's patent infringement of the
27 '624 patent, Fisher & Paykel Healthcare has suffered and will continue to suffer
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1 irreparable harm and injury, including monetary damages in an amount to be
2 determined at trial.

3 125. Upon information and belief, unless enjoined, ResMed, and/or
4 others acting on behalf of ResMed, will continue their infringing acts, thereby
5 causing additional irreparable injury to Fisher & Paykel Healthcare for which
6 there is no adequate remedy at law.

7 **NINTH CLAIM FOR RELIEF**

8 **(Infringement of U.S. Patent No. 6,398,197)**

9 126. Fisher & Paykel Healthcare realleges and reincorporates the
10 allegations set forth in paragraphs 1 through 125.

11 127. Upon information and belief, ResMed products, including at least
12 the S10 CPAP and AirCurve 10 products, infringe at least Claim 1 of the
13 '197 patent under 35 U.S.C. § 271(a), (b), or (c).

14 128. Upon information and belief, ResMed has directly infringed the
15 asserted claims of the '197 patent through the manufacture, use, sale, offer for
16 sale, and/or importation into the United States of the S10 CPAP and AirCurve
17 10 products.

18 129. For example, upon information and belief, the AirSense 10 includes
19 all of the limitations of Claim 1 of the '197 patent. It includes a water chamber
20 adapted for use in conjunction with a heater base. The water chamber has a
21 horizontally oriented gases inlet in a wall. There is an elongate flow tube
22 extending into the water chamber from the inner periphery of the gases inlet,
23 and an inlet end of the elongate flow tube covering the inlet. An outlet end of
24 the elongate flow tube is spaced from the wall of the water chamber. In use, the
25 elongate flow tube receives at the inlet end gases supplied to the gases inlet.
26 The gases pass through the elongate flow tube and exit the flow tube at the
27 outlet end distant from the wall.

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1 130. ResMed is aware of the '197 patent, at least in part through written
2 communications from Fisher & Paykel Healthcare on or about October 1, 2015
3 notifying ResMed of its infringement of this patent.

4 131. Upon information and belief, ResMed has actively induced others
5 to infringe the '197 patent. ResMed's acts constitute infringement of the
6 '197 patent in violation of 35 U.S.C. § 271(b).

7 132. Upon information and belief, ResMed actively induces health-care
8 service providers and users to directly infringe the asserted claims of the
9 '197 patent. By way of example only, upon information and belief, ResMed
10 actively induces direct infringement of the '197 patent by providing directions,
11 demonstrations, guides, manuals, training for use, and/or other materials
12 necessary for the use, refurbishing, and/or servicing of S10 CPAP and AirCurve
13 10 products.

14 133. Upon information and belief, ResMed knew or should have known
15 that these activities would cause direct infringement.

16 134. Upon information and belief, ResMed's acts constitute contributory
17 infringement of the '197 patent in violation of 35 U.S.C. § 271(c). Upon
18 information and belief, ResMed contributorily infringes because, among other
19 things, ResMed offers to sell and/or sells within the United States, and/or
20 imports into the United States, components of S10 CPAP and AirCurve 10
21 products that constitute material parts of the invention of the asserted claims of
22 the '197 patent, are not staple articles or commodities of commerce suitable for
23 substantial non-infringing use, and are known by ResMed to be especially made
24 or especially adapted for use in an infringement of the '197 patent.

25 135. Upon further information and belief, such components are used by
26 ResMed in connection with the refurbishing, servicing and/or use of infringing
27 S10 CPAP and AirCurve 10 products in the United States, thereby constituting
28 direct infringement of the asserted claims of the '197 patent.

136. Upon information and belief, ResMed's infringement of the '197 patent has been, and continues to be, willful, deliberate, and intentional by continuing its acts of infringement after becoming aware of the '197 patent and its infringement thereof, thus acting in reckless disregard of Fisher & Paykel Healthcare's patent rights.

137. As a consequence of ResMed's patent infringement of the '197 patent, Fisher & Paykel Healthcare has suffered and will continue to suffer irreparable harm and injury, including monetary damages in an amount to be determined at trial.

138. Upon information and belief, unless enjoined, ResMed, and/or others acting on behalf of ResMed, will continue their infringing acts, thereby causing additional irreparable injury to Fisher & Paykel Healthcare for which there is no adequate remedy at law.

VI. PRAYER FOR RELIEF

1. WHEREFORE, Plaintiff Fisher & Paykel Healthcare prays for judgment and seeks relief as follows:

(1) Pursuant to 35 U.S.C. § 271, a determination that ResMed and its officers, agents, servants, employees, attorneys and all others in active concert and/or participation with them have infringed each of the '807, '741, '345, '641, '902, '072, '547, '624, and '197 patents through the manufacture, use, importation, offer for sale, and/or sale of infringing products and/or any of the other acts prohibited by 35 U.S.C. § 271;

(2) Pursuant to 35 U.S.C. § 283, an injunction enjoining ResMed and its officers, agents, servants, employees, attorneys and all others in active concert and/or participation with them from infringing the '807, '741, '345, '641, '902, '072, '547, '624, and '197 patents through the manufacture, use, importation, offer for sale, and/or sale of infringing products and/or any of the

1 other acts prohibited by 35 U.S.C. § 271, including preliminary and permanent
2 injunctive relief;

3 (3) Pursuant to 35 U.S.C. § 284, an award of compensating Fisher &
4 Paykel Healthcare for ResMed's infringement of the '807, '741, '345, '641,
5 '902, '072, '547, '624, and '197 patents through payment of not less than a
6 reasonable royalty on ResMed's sales of infringing products;

7 (4) Pursuant to 35 U.S.C. § 284, an award increasing damages up to
8 three times the amount found or assessed by the jury for ResMed's infringement
9 of each of the '807, '741, '345, '641, '902, '072, '547, '624, and '197 patents in
10 view of the willful and deliberate nature of the infringement;

11 (5) Pursuant to 35 U.S.C. § 285, a finding that this is an exceptional
12 case, and an award of reasonable attorney's fees and non-taxable costs;

13 (6) An assessment of prejudgment and post-judgment interest and
14 costs against ResMed, together with an award of such interest and costs,
15 pursuant to 35 U.S.C. § 284;

16 (7) An award of taxable costs; and

17 (8) That Fisher & Paykel Healthcare be granted such other and further
18 relief as the Court deems equitable and just in the circumstances.

19 Respectfully submitted,

20 KNOBBE, MARTENS, OLSON & BEAR, LLP

21
22 Dated: August 16, 2016

By: /s/ Sheila N. Swaroop

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Fisher & Paykel Healthcare Limited demands a trial by jury of all issues raised by the pleadings which are triable by jury.

Dated: August 16, 2016

By: /s/ Sheila N. Swaroop

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