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14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

17 RESMED INC., a Delaware Corporation,
18 RESMED CORP, a Minnesota
19 Corporation, and RESMED LTD, an
20 Australian Corporation,

21 Plaintiffs,

22 v.

23 BMC MEDICAL CO., LTD., a Chinese
24 Corporation, 3B PRODUCTS, L.L.C. a
25 Florida Limited Liability Company, and
26 3B MEDICAL, INC., a Florida
27 Corporation,

28 Defendants.

Case No. **'13CV1246 MMAWMC**

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiffs ResMed Inc., ResMed Corp, and ResMed Ltd (collectively
2 “Plaintiffs” or “ResMed”) hereby file this complaint against Defendants BMC
3 Medical Co., Ltd., 3B Products, L.L.C., and 3B Medical, Inc. and allege as
4 follows:

5 1. Plaintiff ResMed Inc. is a corporation organized under the laws of the
6 state of Delaware with its principal place of business in San Diego, California.

7 2. Plaintiff ResMed Corp is a corporation organized under the laws of the
8 state of Minnesota with its principal place of business in San Diego, California.

9 3. Plaintiff ResMed Ltd is a corporation organized under the laws of
10 Australia, having its principal place of business in Bella Vista, New South Wales,
11 Australia.

12 4. ResMed Corp and ResMed Ltd are, respectively, direct and indirect
13 subsidiaries of ResMed Inc.

14 5. As used herein, the term “Plaintiffs” or “ResMed” means individually
15 and/or collectively ResMed Inc., ResMed Corp, and ResMed Ltd.

16 6. On information and belief, Defendant BMC Medical Co., Ltd.
17 (“BMC”) is a corporation organized under the laws of the country of China with its
18 principal place of business at 5/F Main Building, No.19 Gucheng Street West,
19 Shijingshan, Beijing 100043, China.

20 7. On information and belief, Defendant 3B Medical, Inc. (“3B Medical”)
21 is the U.S. subsidiary of BMC. On information and belief, 3B Medical is a
22 corporation organized under the laws of the state of Florida with its principal place
23 of business at 21301 US Highway 27, Lake Wales, FL 33859

24 8. On information and belief, Defendant 3B Products, L.L.C. (“3B
25 Products”) is a limited liability company organized under the laws of the state of
26 Florida with its principal place of business at 21301 US Highway 27, Lake Wales,
27 FL 33859.

9. As used herein, the term “3B” means collectively 3B Medical and 3B Products.

10. As used herein, the term “Defendants” means individually and/or collectively BMC and 3B.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over the claims pleaded herein under 28 U.S.C. §§ 1331, 1338(a), and 2201(a) because the actions below concern a federal question arising under the patent laws of the United States, including 35 U.S.C. § 271.

12. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and 1400(b) because, among other reasons, Defendants are subject to personal jurisdiction in this judicial district and have committed acts of infringement in this judicial district or will imminently commit acts of infringement in this judicial district.

13. Upon information and belief, Defendants have placed infringing products and/or will place infringing products into the stream of commerce by shipping those products into this judicial district and/or by knowing that such products would be shipped into this judicial district. Defendants' established distribution network distributes accused products directly to customers located in this district. For those products soon to be released in the United States, Defendants' established distribution network would distribute the accused products directly to customers located in this district.

14. For example, upon information and belief, BMC's established distribution network distributes accused products to intermediary suppliers like 3B, who distribute the products nationally, including in this district. By importing into the United States, shipping into, selling, offering to sell, and/or using products that infringe the patents-in-suit in this district, or by inducing or causing those acts to occur, Defendants have transacted and continue to transact business and perform

1 work and services in this district, have supplied and continue to supply services and
2 things in this district, have caused and continue to cause injury and damages in this
3 district by acts and omissions in this district, and have caused and continue to cause
4 injury and damages in this district by acts or omissions outside of this district while
5 deriving substantial revenue from services or things used or consumed within this
6 district, and will continue to do so unless enjoined by this Court.

7 **THE PATENTS**

8 15. ResMed Ltd is the owner by assignment of all right, title, and interest
9 in and to United States Patent No. 7,159,587 entitled “Respiratory Mask Having Gas
10 Washout Vent And Gas Washout Vent Assembly For Respiratory Mask,”
11 (hereinafter “the ’587 patent”), which was duly and legally issued on January 9,
12 2007. The ’587 patent is valid, enforceable, and currently in full force and effect. A
13 copy of the ’587 patent is attached as Exhibit A.

14 16. ResMed Inc. is the exclusive licensee of the ’587 patent and has
15 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

16 17. ResMed Ltd is the owner by assignment of all right, title, and interest
17 in and to United States Patent No. 7,487,772 entitled “Ergonomic And Adjustable
18 Respiratory Mask Assembly With Elbow Assembly,” (hereinafter “the ’772
19 patent”), which was duly and legally issued on February 10, 2009. The ’772 patent
20 is valid, enforceable, and currently in full force and effect. A copy of the ’772
21 patent is attached as Exhibit B.

22 18. ResMed Inc. is the exclusive licensee of the ’772 patent and has
23 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

24 19. ResMed Ltd is the owner by assignment of all right, title, and interest
25 in and to United States Patent No. 7,614,398 entitled “Humidifier With Structure To
26 Prevent Backflow Of Liquid Through The Humidifier Inlet,” (hereinafter
27 “the ’398 patent”), which was duly and legally issued on November 10, 2009. The
28

1 '398 patent is valid, enforceable, and currently in full force and effect. A copy of
2 the '398 patent is attached as Exhibit C.

3 20. ResMed Inc. is the exclusive licensee of the '398 patent and has
4 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

5 21. ResMed Ltd is the owner by assignment of all right, title, and interest
6 in and to United States Patent No. 7,938,116 entitled "Ergonomic And Adjustable
7 Respiratory Mask Assembly With Headgear Assembly," (hereinafter
8 "the '116 patent"), which was duly and legally issued on May 10, 2011. The '116
9 patent is valid, enforceable, and currently in full force and effect. A copy of the
10 '116 patent is attached as Exhibit D.

11 22. ResMed Inc. is the exclusive licensee of the '116 patent and has
12 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

13 23. ResMed Ltd is the owner by assignment of all right, title, and interest
14 in and to United States Patent No. 7,341,060 entitled "Ergonomic And Adjustable
15 Respiratory Mask Assembly With Headgear Assembly," (hereinafter
16 "the '060 patent"), which was duly and legally issued on March 11, 2008. The '060
17 patent is valid, enforceable, and currently in full force and effect. A copy of the
18 '060 patent is attached as Exhibit E.

19 24. ResMed Inc. is the exclusive licensee of the '060 patent and has
20 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

21 25. ResMed Ltd is the owner by assignment of all right, title, and interest
22 in and to United States Patent No. 8,312,883 entitled "Nasal Assembly," (hereinafter
23 "the '883 patent"), which was duly and legally issued on November 20, 2012. The
24 '883 patent is valid, enforceable, and currently in full force and effect. A copy of
25 the '883 patent is attached as Exhibit F.

26 26. ResMed Inc. is the exclusive licensee of the '883 patent and has
27 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.
28

27. As used herein, the term “Patents-in-Suit” means individually and/or collectively the ’587 patent, the ’772 patent, the ’060 patent, the ’883 patent, the ’116 patent, and the ’398 patent.

BACKGROUND

28. ResMed is a leading developer, manufacturer and distributor of medical equipment for treating, diagnosing, and managing sleep-disordered breathing and other respiratory disorders. The company is dedicated to developing innovative products to improve the lives of those who suffer from these conditions and to increasing awareness among patients and healthcare professionals of the potentially serious health consequences of untreated sleep-disordered breathing (sometimes referred to as “SDB”). Since its founding in 1989, ResMed has focused on developing and commercializing systems for the treatment of obstructive sleep apnea (“OSA”), a major subset of SDB. ResMed’s development of innovative therapies for the treatment of OSA has resulted in over 3,000 patents granted or pending worldwide, and its product line incorporates technology that is a highly effective and proven way to treat OSA.

29. ResMed's portfolio of SDB products includes flow generators, humidifiers, diagnostic products, mask systems, headgear and other accessories, including, for example, certain sleep-disordered breathing treatment full face masks, including the Quattro FX, Quattro FX for Her, and Mirage Quattro. ResMed's SDB products also include certain sleep-disordered breathing treatment nasal masks, including the Mirage FX, Mirage FX for Her, Mirage Liberty, Mirage Micro, Mirage Activa LT and Mirage Vista. ResMed's SDB products also include certain sleep-disordered breathing treatment nasal pillows, including the Swift FX, Swift FX for Her, Swift FX Bella Gray, Swift FX Bella, Swift LT for Her, and Mirage Swift II. In addition, ResMed's SDB products include certain sleep-disordered breathing treatment systems that consist in part of a flow generator, such as the multiple variations of ResMed's S9 flow generator.

1 30. ResMed marks its patents on some products and marks all of its
2 products on its website at: www.resmed.com/ip.

3 31. On information and belief, BMC, on its own and/or through its
4 subsidiaries, is in the business of manufacturing, packaging, importing, selling,
5 offering to sell, and/or distributing a variety of sleep-disordered breathing treatment
6 systems and components thereof including (a) flow generators, including but not
7 limited to, BMC's CPAP machines, such as the BMC-630A and BMC-630C ("the
8 Accused Machines"); (b) nasal pillows, including, but not limited to, BMC's Willow
9 product line ("the Accused Nasal Pillows"); and (c) masks, including, but not
10 limited to BMC's iVolve product line ("the Accused Nasal Masks"). As used
11 hereinafter, the phrase "Accused Products" shall mean individually and collectively
12 the Accused Machines, the Accused Nasal Masks and the Accused Nasal Pillows.

13 32. On information and belief, in March 2013, Defendants imported an
14 iVolve mask into the United States where it was displayed at a trade show in Las
15 Vegas, NV. On information and belief, this was done in anticipation of offering for
16 sale and selling the iVolve in the United States.

17 33. On information and belief, Defendants have completed the creation of
18 marketing materials, including specifications and user manuals, for the iVolve.
19 Defendants have also created multiple webpages, accessible in the United States,
20 and in this jurisdiction, marketing the iVolve. On information and belief,
21 Defendants have undertaken this activity in anticipation of offering to sell and
22 selling the Accused Nasal Masks in the United States.

23 34. On information and belief, BMC offers for sale, sells, licenses, and/or
24 distributes the Accused Products in the United States, including within this district,
25 and/or imports the Accused Products into the United States.

26 35. 3B is an importer and seller of durable medical equipment such as
27 sleep-disordered breathing treatment systems and components thereof. 3B markets
28 and sells the Accused Products in the United States.

1 36. On information and belief, 3B obtains the Accused Products from
2 BMC and sells them in the United States and this district.

3 37. On information and belief, 3B offers for sale, sells, licenses, and/or
4 distributes the Accused Products in the United States, including within this district,
5 and/or imports the Accused Products into the United States.

6 38. On information and belief, Defendants were aware of ResMed's
7 products that practice the patents identified in this Complaint. On information and
8 belief, because Defendants were aware of ResMed's products, Defendants were also
9 aware of ResMed patents as a result of patent marking, including the marking on
10 ResMed's website. On information and belief, Defendants' acts of infringement of
11 the patents identified below have occurred with knowledge of ResMed's rights in its
12 patents or with willful blindness thereto.

13 **FIRST CLAIM FOR RELIEF**

14 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,159,587**

15 39. The allegations of Paragraphs 1-38 are incorporated herein by
16 reference.

17 40. BMC has directly infringed the claims of the '587 patent, literally
18 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
19 within the United States, and/or importing into the United States, the Accused Nasal
20 Masks and the Accused Nasal Pillows.

21 41. ResMed is well-known in the industry for making and selling SDB
22 products and ResMed is well-known in the industry to be an innovator. ResMed
23 also marks its products with its patents. Therefore, on information and belief, BMC
24 either must have known about the '587 patent or must have been willfully blind to it
25 at the time they engaged in their infringing activities and, in any event, was aware of
26 the '587 patent at least as early as the service date of this complaint.

27 42. On information and belief, BMC has induced and continues to induce
28 infringement of the '587 patent by actively encouraging customers and others to

1 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
2 the United States with knowledge that such import, sale or use would infringe the
3 '587 patent. On information and belief, those customers and others in fact infringed
4 the '587 patent by importing, selling and/or using the Accused Nasal Masks and the
5 Accused Nasal Pillows in the United States.

6 43. As a result of BMC's infringement of the '587 patent, ResMed has
7 suffered and will continue to suffer damage. ResMed is entitled to recover from
8 BMC the damages adequate to compensate for such infringement, which have yet to
9 be determined.

10 44. BMC's acts of infringement have caused and will continue to cause
11 irreparable harm to ResMed unless and until enjoined by this Court.

12 **SECOND CLAIM FOR RELIEF**

13 **DECLARATORY JUDGMENT OF BMC'S INFRINGEMENT OF U.S.**

14 **PATENT NO. 7,159,587**

15 45. The allegations of Paragraphs 1-38 are incorporated herein by
16 reference.

17 46. A substantial controversy exists between BMC and ResMed regarding
18 the Accused Nasal Masks which, when imported into the United States, sold,
19 offered for sale, or used within the United States, would infringe literally, and/or
20 under the doctrine of equivalents, the '587 patent.

21 47. On information and belief, BMC has taken active steps to promote the
22 Accused Nasal Masks in the United States, including in this jurisdiction, in
23 preparation for actual sales. For example, BMC has created product marketing
24 materials and a website, accessible in the United States, including within this
25 jurisdiction, regarding the Accused Nasal Masks. Moreover, BMC has actively
26 promoted the product in the United States by displaying and marketing the Accused
27 Nasal Masks at trade shows, including at least one in March 2013 in Las Vegas, NV.
28

1 48. The controversy is of sufficient immediacy and reality to warrant the
2 issuance of declaratory judgment.

3 49. On information and belief, BMC will use at least its established
4 distribution network in the United States, which includes 3B, to import and sell the
5 Accused Nasal Masks. As such, BMC's actions would induce infringement of the
6 '587 patent by actively encouraging customers and others to import, sell and/or use
7 the Accused Nasal Masks in the United States with knowledge that such import, sale
8 or use would infringe the '587 patent. On information and belief, those customers
9 and others would in fact infringe the '587 patent by importing, selling and/or using
10 the Accused Nasal Masks in the United States.

11 50. If BMC is permitted to infringe the '587 patent, ResMed will suffer
12 damage. ResMed would be entitled to recover from BMC the damages adequate to
13 compensate for such infringement, which have yet to be determined.

14 51. BMC's acts of infringement will cause irreparable harm to ResMed
15 unless and until enjoined by this Court.

16 **THIRD CLAIM FOR RELIEF**

17 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,487,772**

18 52. The allegations of Paragraphs 1-38 are incorporated herein by
19 reference.

20 53. BMC has directly infringed the claims of the '772 patent, literally
21 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
22 within the United States, and/or importing into the United States, the Accused Nasal
23 Masks and the Accused Nasal Pillows.

24 54. ResMed is well-known in the industry for making and selling SDB
25 products and ResMed is well-known in the industry to be an innovator. ResMed
26 also marks its products with its patents. Therefore, on information and belief, BMC
27 either must have known about the '772 patent or must have been willfully blind to it
28

1 at the time they engaged in their infringing activities and, in any event, was aware of
2 the '772 patent at least as early as the service date of this complaint.

3 55. On information and belief, BMC has induced and continues to induce
4 infringement of the '772 patent by actively encouraging customers and others to
5 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
6 the United States with knowledge that such import, sale or use would infringe the
7 '772 patent. On information and belief, those customers and others in fact infringed
8 the '772 patent by importing, selling and/or using the Accused Nasal Masks and the
9 Accused Nasal Pillows in the United States.

10 56. As a result of BMC's infringement of the '772 patent, ResMed has
11 suffered and will continue to suffer damage. ResMed is entitled to recover from
12 BMC the damages adequate to compensate for such infringement, which have yet to
13 be determined.

14 57. BMC's acts of infringement have caused and will continue to cause
15 irreparable harm to ResMed unless and until enjoined by this Court.

16 **FOURTH CLAIM FOR RELIEF**

17 **DECLARATORY JUDGMENT OF BMC'S INFRINGEMENT OF U.S.**

18 **PATENT NO. 7,487,772**

19 58. The allegations of Paragraphs 1-38 are incorporated herein by
20 reference.

21 59. A substantial controversy exists between BMC and ResMed regarding
22 the Accused Nasal Masks which, when imported into the United States, sold,
23 offered for sale, or used within the United States, would infringe literally, and/or
24 under the doctrine of equivalents, the '772 patent.

25 60. On information and belief, BMC has taken active steps to promote the
26 Accused Nasal Masks in the United States, including in this jurisdiction, in
27 preparation for actual sales. For example, BMC has created product marketing
28 materials and a website, accessible in the United States, including within this

1 jurisdiction, regarding the Accused Nasal Masks. Moreover, BMC has actively
2 promoted the product in the United States by displaying and marketing the Accused
3 Nasal Masks at trade shows, including at least one in March 2013 in Las Vegas, NV.

4 61. The controversy is of sufficient immediacy and reality to warrant the
5 issuance of declaratory judgment.

6 62. On information and belief, BMC will use at least its established
7 distribution network in the United States, which includes 3B, to import and sell the
8 Accused Nasal Masks. As such, BMC's actions would induce infringement of the
9 '772 patent by actively encouraging customers and others to import, sell and/or use
10 the Accused Nasal Masks in the United States with knowledge that such import, sale
11 or use would infringe the '772 patent. On information and belief, those customers
12 and others would in fact infringe the '772 patent by importing, selling and/or using
13 the Accused Nasal Masks in the United States.

14 63. If BMC is permitted to infringe the '772 patent, ResMed will suffer
15 damage. ResMed would be entitled to recover from BMC the damages adequate to
16 compensate for such infringement, which have yet to be determined.

17 64. BMC's acts of infringement will cause irreparable harm to ResMed
18 unless and until enjoined by this Court.

19 **FIFTH CLAIM FOR RELIEF**

20 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,341,060**

21 65. The allegations of Paragraphs 1-38 are incorporated herein by
22 reference.

23 66. BMC has directly infringed the claims of the '060 patent, literally
24 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
25 within the United States, and/or importing into the United States, the Accused Nasal
26 Pillows.

27 67. ResMed is well-known in the industry for making and selling SDB
28 products and ResMed is well-known in the industry to be an innovator. ResMed

1 also marks its products with its patents. Therefore, on information and belief, BMC
2 either must have known about the '060 patent or must have been willfully blind to it
3 at the time they engaged in their infringing activities and, in any event, was aware of
4 the '060 patent at least as early as the service date of this complaint.

5 68. On information and belief, BMC has induced and continues to induce
6 infringement of the '060 patent by actively encouraging customers and others to
7 import, sell and/or use the Accused Nasal Pillows in the United States with
8 knowledge that such import, sale or use would infringe the '060 patent. On
9 information and belief, those customers and others in fact infringed the '060 patent
10 by importing, selling and/or using the Accused Nasal Pillows in the United States.

11 69. As a result of BMC's infringement of the '060 patent, ResMed has
12 suffered and will continue to suffer damage. ResMed is entitled to recover from
13 BMC the damages adequate to compensate for such infringement, which have yet to
14 be determined.

15 70. BMC's acts of infringement have caused and will continue to cause
16 irreparable harm to ResMed unless and until enjoined by this Court.

17 **SIXTH CLAIM FOR RELIEF**

18 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,938,116**

19 71. The allegations of Paragraphs 1-38 are incorporated herein by
20 reference.

21 72. BMC has directly infringed the claims of the '116 patent, literally
22 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
23 within the United States, and/or importing into the United States, the Accused Nasal
24 Pillows.

25 73. ResMed is well-known in the industry for making and selling SDB
26 products and ResMed is well-known in the industry to be an innovator. ResMed
27 also marks its products with its patents. Therefore, on information and belief, BMC
28 either must have known about the '116 patent or must have been willfully blind to it

1 at the time they engaged in their infringing activities and, in any event, was aware of
2 the '116 patent at least as early as the service date of this complaint.

3 74. On information and belief, BMC has induced and continues to induce
4 infringement of the '116 patent by actively encouraging customers and others to
5 import, sell and/or use the Accused Nasal Pillows in the United States with
6 knowledge that such import, sale or use would infringe the '116 patent. On
7 information and belief, those customers and others in fact infringed the '116 patent
8 by importing, selling and/or using the Accused Nasal Pillows in the United States.

9 75. As a result of BMC's infringement of the '116 patent, ResMed has
10 suffered and will continue to suffer damage. ResMed is entitled to recover from
11 BMC the damages adequate to compensate for such infringement, which have yet to
12 be determined.

13 76. BMC's acts of infringement have caused and will continue to cause
14 irreparable harm to ResMed unless and until enjoined by this Court.

15 **SEVENTH CLAIM FOR RELIEF**

16 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 8,312,883**

17 77. The allegations of Paragraphs 1-38 are incorporated herein by
18 reference.

19 78. BMC has directly infringed the claims of the '883 patent, literally
20 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
21 within the United States, and/or importing into the United States, the Accused Nasal
22 Pillows.

23 79. ResMed is well-known in the industry for making and selling SDB
24 products and ResMed is well-known in the industry to be an innovator. ResMed
25 also marks its products with its patents. Therefore, on information and belief, BMC
26 either must have known about the '883 patent or must have been willfully blind to it
27 at the time they engaged in their infringing activities and, in any event, was aware of
28 the '116 patent at least as early as the service date of this complaint.

1 80. On information and belief, BMC has induced and continues to induce
2 infringement of the '883 patent by actively encouraging customers and others to
3 import, sell and/or use the Accused Nasal Pillows in the United States with
4 knowledge that such import, sale or use would infringe the '883 patent. On
5 information and belief, those customers and others in fact infringed the '883 patent
6 by importing, selling and/or using the Accused Nasal Pillows in the United States.

7 81. As a result of BMC's infringement of the '883 patent, ResMed has
8 suffered and will continue to suffer damage. ResMed is entitled to recover from
9 BMC the damages adequate to compensate for such infringement, which have yet to
10 be determined.

11 82. BMC's acts of infringement have caused and will continue to cause
12 irreparable harm to ResMed unless and until enjoined by this Court.

13 **EIGHTH CLAIM FOR RELIEF**

14 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,614,398**

15 83. The allegations of Paragraphs 1-38 are incorporated herein by
16 reference.

17 84. BMC has directly infringed the claims of the '398 patent, literally
18 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
19 within the United States, and/or importing into the United States, at least the
20 Accused Machines.

21 85. ResMed is well-known in the industry for making and selling SDB
22 products and ResMed is well-known in the industry to be an innovator. ResMed
23 also marks its products with its patents. Therefore, on information and belief, BMC
24 either must have known about the '398 patent or must have been willfully blind to it
25 at the time they engaged in their infringing activities and, in any event, was aware of
26 the '398 patent at least as early as the service date of this complaint.

27 86. On information and belief, BMC has induced and continues to induce
28 infringement of the '398 patent by actively encouraging customers and others to

1 import, sell and/or use the Accused Machines in the United States with knowledge
2 that such import, sale or use would infringe the '398 patent. On information and
3 belief, those customers and others in fact infringed the '398 patent by importing,
4 selling and/or using the Accused Machines in the United States.

5 87. As a result of BMC's infringement of the '398 patent, ResMed has
6 suffered and will continue to suffer damage. ResMed is entitled to recover from
7 BMC the damages adequate to compensate for such infringement, which have yet to
8 be determined.

9 88. BMC's acts of infringement have caused and will continue to cause
10 irreparable harm to ResMed unless and until enjoined by this Court.

11 **NINTH CLAIM FOR RELIEF**

12 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,159,587**

13 89. The allegations of Paragraphs 1-38 are incorporated herein by
14 reference.

15 90. 3B has directly infringed the claims of the '587 patent, literally and/or
16 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
17 United States, and/or importing into the United States, the Accused Nasal Masks
18 and the Accused Nasal Pillows.

19 91. ResMed is well-known in the industry for making and selling SDB
20 products and ResMed is well-known in the industry to be an innovator. ResMed
21 also marks its products with its patents. Therefore, on information and belief, 3B
22 either must have known about the '587 patent or must have been willfully blind to it
23 at the time they engaged in their infringing activities and, in any event, was aware of
24 the '587 patent at least as early as the service date of this complaint.

25 92. On information and belief, 3B has induced and continues to induce
26 infringement of the '587 patent by actively encouraging customers and others to
27 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
28 the United States with knowledge that such import, sale or use would infringe the

1 '587 patent. On information and belief, those customers and others in fact infringed
2 the '587 patent by importing, selling and/or using the Accused Nasal Masks and the
3 Accused Nasal Pillows in the United States.

4 93. As a result of 3B's infringement of the '587 patent, ResMed has
5 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
6 the damages adequate to compensate for such infringement, which have yet to be
7 determined.

8 94. 3B's acts of infringement have caused and will continue to cause
9 irreparable harm to ResMed unless and until enjoined by this Court.

10 **TENTH CLAIM FOR RELIEF**

11 **DECLARATORY JUDGMENT OF 3B'S INFRINGEMENT OF U.S.**

12 **PATENT NO. 7,159,587**

13 95. The allegations of Paragraphs 1-38 are incorporated herein by
14 reference.

15 96. A substantial controversy exists between 3B and ResMed regarding the
16 Accused Nasal Masks which, when imported into the United States, sold, offered for
17 sale, or used within the United States would infringe literally, and/or under the
18 doctrine of equivalents, the '587 patent.

19 97. On information and belief, 3B has taken active steps to promote the
20 Accused Nasal Masks in the United States, including in this jurisdiction, in
21 preparation for actual sales. For example, 3B has created product marketing
22 materials and a website, accessible in the United States, including within this
23 jurisdiction, regarding the Accused Nasal Masks. Moreover, 3B has actively
24 promoted the product in the United States by displaying and marketing the Accused
25 Nasal Masks at trade shows, including at least one in March 2013 in Las Vegas, NV.

26 98. The controversy is of sufficient immediacy and reality to warrant the
27 issuance of declaratory judgment.
28

1 99. On information and belief, 3B will use at least its established
2 distribution network in the United States to import and sell the Accused Nasal
3 Masks. As such, 3B's actions would induce infringement of the '587 patent by
4 actively encouraging customers and others to import, sell and/or use the Accused
5 Nasal Masks in the United States with knowledge that such import, sale or use
6 would infringe the '587 patent. On information and belief, those customers and
7 others would in fact infringed the '587 patent by importing, selling and/or using the
8 Accused Nasal Masks in the United States.

9 100. If 3B is permitted to infringe the '587 patent, ResMed will suffer
10 damage. ResMed would be entitled to recover from 3B the damages adequate to
11 compensate for such infringement, which have yet to be determined.

12 101. 3B's acts of infringement will cause irreparable harm to ResMed unless
13 and until enjoined by this Court.

14 **ELEVENTH CLAIM FOR RELIEF**

15 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,487,772**

16 102. The allegations of Paragraphs 1-38 are incorporated herein by
17 reference.

18 103. 3B has directly infringed the claims of the '772 patent, literally and/or
19 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
20 United States, and/or importing into the United States, the Accused Nasal Masks
21 and the Accused Nasal Pillows.

22 104. ResMed is well-known in the industry for making and selling SDB
23 products and ResMed is well-known in the industry to be an innovator. ResMed
24 also marks its products with its patents. Therefore, on information and belief, 3B
25 either must have known about the '772 patent or must have been willfully blind to it
26 at the time they engaged in their infringing activities and, in any event, was aware of
27 the '772 patent at least as early as the service date of this complaint.
28

1 105. On information and belief, 3B has induced and continues to induce
2 infringement of the '772 patent by actively encouraging customers and others to
3 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
4 the United States with knowledge that such import, sale or use would infringe the
5 '772 patent. On information and belief, those customers and others in fact infringed
6 the '772 patent by importing, selling and/or using the Accused Nasal Masks and the
7 Accused Nasal Pillows in the United States.

8 106. As a result of 3B's infringement of the '772 patent, ResMed has
9 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
10 the damages adequate to compensate for such infringement, which have yet to be
11 determined.

12 107. 3B's acts of infringement have caused and will continue to cause
13 irreparable harm to ResMed unless and until enjoined by this Court.

14 **TWELFTH CLAIM FOR RELIEF**

15 **DECLARATORY JUDGMENT OF 3B'S INFRINGEMENT OF U.S.**

16 **PATENT NO. 7,487,772**

17 108. The allegations of Paragraphs 1-38 are incorporated herein by
18 reference.

19 109. A substantial controversy exists between 3B and ResMed regarding the
20 Accused Nasal Masks which, when imported into the United States, sold, offered for
21 sale, or used within the United States would infringe literally, and/or under the
22 doctrine of equivalents, the '772 patent.

23 110. On information and belief, 3B has taken active steps to promote the
24 Accused Nasal Masks in the United States, including in this jurisdiction, in
25 preparation for actual sales. For example, 3B has created product marketing
26 materials and a website, accessible in the United States, including within this
27 jurisdiction, regarding the Accused Nasal Masks. Moreover, 3B has actively
28

1 promoted the product in the United States by displaying and marketing the Accused
2 Nasal Masks at trade shows, including at least one in March 2013 in Las Vegas, NV.

3 111. The controversy is of sufficient immediacy and reality to warrant the
4 issuance of declaratory judgment.

5 112. On information and belief, 3B will use at least its established
6 distribution network in the United States to import and sell the Accused Nasal
7 Masks. As such, 3B's actions would induce infringement of the '772 patent by
8 actively encouraging customers and others to import, sell and/or use the Accused
9 Nasal Masks in the United States with knowledge that such import, sale or use
10 would infringe the '772 patent. On information and belief, those customers and
11 others would in fact infringed the '772 patent by importing, selling and/or using the
12 Accused Nasal Masks in the United States.

13 113. If 3B is permitted to infringe the '772 patent, ResMed will suffer
14 damage. ResMed would be entitled to recover from 3B the damages adequate to
15 compensate for such infringement, which have yet to be determined.

16 114. 3B's acts of infringement will cause irreparable harm to ResMed unless
17 and until enjoined by this Court.

18 **THIRTEENTH CLAIM FOR RELIEF**

19 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,341,060**

20 115. The allegations of Paragraphs 1-38 are incorporated herein by
21 reference.

22 116. 3B has directly infringed the claims of the '060 patent, literally and/or
23 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
24 United States, and/or importing into the United States, the Accused Nasal Pillows.

25 117. ResMed is well-known in the industry for making and selling SDB
26 products and ResMed is well-known in the industry to be an innovator. ResMed
27 also marks its products with its patents. Therefore, on information and belief, 3B
28 either must have known about the '060 patent or must have been willfully blind to it

1 at the time they engaged in their infringing activities and, in any event, was aware of
2 the '060 patent at least as early as the service date of this complaint.

3 118. On information and belief, 3B has induced and continues to induce
4 infringement of the '060 patent by actively encouraging customers and others to
5 import, sell and/or use the Accused Nasal Pillows in the United States with
6 knowledge that such import, sale or use would infringe the '060 patent. On
7 information and belief, those customers and others in fact infringed the '060 patent
8 by importing, selling and/or using the Accused Nasal Pillows in the United States.

9 119. As a result of 3B's infringement of the '060 patent, ResMed has
10 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
11 the damages adequate to compensate for such infringement, which have yet to be
12 determined.

13 120. 3B's acts of infringement have caused and will continue to cause
14 irreparable harm to ResMed unless and until enjoined by this Court.

15 **FOURTEENTH CLAIM FOR RELIEF**

16 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,938,116**

17 121. The allegations of Paragraphs 1-38 are incorporated herein by
18 reference.

19 122. 3B has directly infringed the claims of the '116 patent, literally and/or
20 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
21 United States, and/or importing into the United States, the Accused Nasal Pillows.

22 123. ResMed is well-known in the industry for making and selling SDB
23 products and ResMed is well-known in the industry to be an innovator. ResMed
24 also marks its products with its patents. Therefore, on information and belief, 3B
25 either must have known about the '116 patent or must have been willfully blind to it
26 at the time they engaged in their infringing activities and, in any event, was aware of
27 the '116 patent at least as early as the service date of this complaint.
28

1 124. On information and belief, 3B has induced and continues to induce
2 infringement of the '116 patent by actively encouraging customers and others to
3 import, sell and/or use the Accused Nasal Pillows in the United States with
4 knowledge that such import, sale or use would infringe the '116 patent. On
5 information and belief, those customers and others in fact infringed the '116 patent
6 by importing, selling and/or using the Accused Nasal Pillows in the United States.

7 125. As a result of 3B's infringement of the '116 patent, ResMed has
8 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
9 the damages adequate to compensate for such infringement, which have yet to be
10 determined.

11 126. 3B's acts of infringement have caused and will continue to cause
12 irreparable harm to ResMed unless and until enjoined by this Court.

13 **FIFTEENTH CLAIM FOR RELIEF**

14 **3B'S INFRINGEMENT OF U.S. PATENT NO. 8,312,883**

15 127. The allegations of Paragraphs 1-38 are incorporated herein by
16 reference.

17 128. 3B has directly infringed the claims of the '883 patent, literally and/or
18 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
19 United States, and/or importing into the United States, the Accused Nasal Pillows.

20 129. ResMed is well-known in the industry for making and selling SDB
21 products and ResMed is well-known in the industry to be an innovator. ResMed
22 also marks its products with its patents. Therefore, on information and belief, 3B
23 either must have known about the '883 patent or must have been willfully blind to it
24 at the time they engaged in their infringing activities and, in any event, was aware of
25 the '116 patent at least as early as the service date of this complaint.

26 130. On information and belief, 3B has induced and continues to induce
27 infringement of the '883 patent by actively encouraging customers and others to
28 import, sell and/or use the Accused Nasal Pillows in the United States with

1 knowledge that such import, sale or use would infringe the '883 patent. On
2 information and belief, those customers and others in fact infringed the '883 patent
3 by importing, selling and/or using the Accused Nasal Pillows in the United States.

4 131. As a result of 3B's infringement of the '883 patent, ResMed has
5 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
6 the damages adequate to compensate for such infringement, which have yet to be
7 determined.

8 132. 3B's acts of infringement have caused and will continue to cause
9 irreparable harm to ResMed unless and until enjoined by this Court.

10 **SIXTEENTH CLAIM FOR RELIEF**

11 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,614,398**

12 133. The allegations of Paragraphs 1-38 are incorporated herein by
13 reference.

14 134. 3B has directly infringed the claims of the '398 patent, literally and/or
15 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
16 United States, and/or importing into the United States, at least the Accused
17 Machines.

18 135. ResMed is well-known in the industry for making and selling SDB
19 products and ResMed is well-known in the industry to be an innovator. ResMed
20 also marks its products with its patents. Therefore, on information and belief, 3B
21 either must have known about the '398 patent or must have been willfully blind to it
22 at the time they engaged in their infringing activities and, in any event, was aware of
23 the '398 patent at least as early as the service date of this complaint.

24 136. On information and belief, 3B has induced and continues to induce
25 infringement of the '398 patent by actively encouraging customers and others to
26 import, sell and/or use the Accused Machines in the United States with knowledge
27 that such import, sale or use would infringe the '398 patent. On information and
28

1 belief, those customers and others in fact infringed the '398 patent by importing,
2 selling and/or using the Accused Machines in the United States.

3 137. As a result of 3B's infringement of the '398 patent, ResMed has
4 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
5 the damages adequate to compensate for such infringement, which have yet to be
6 determined. 3B's acts of infringement have caused and will continue to cause
7 irreparable harm to ResMed unless and until enjoined by this Court.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, ResMed prays that this Court enters judgment and provides
10 relief as follows:

11 (a) That BMC has directly infringed the Patents-in-Suit.

12 (b) That BMC has induced infringement of the Patents-in-Suit;

13 (c) A declaration that BMC's importation, use, sale, or offer for sale of the
14 Accused Nasal Masks infringes and would infringe the '587 Patent and the '772
15 Patent.

16 (d) That BMC, and its officers, agents, servants, employees, and those in
17 active concert or participation with them directly or indirectly, be enjoined from
18 infringing the Patents-in-Suit;

19 (e) That BMC pay to ResMed the damages resulting from BMC's
20 infringement of the Patents-in-Suit, together with interest and costs, and all other
21 damages permitted by 35 U.S.C. § 284;

22 (f) That BMC be ordered to account for additional damages for any and all
23 periods of infringement not included in the damages awarded by the Court or jury,
24 including specifically any time periods between any order or verdict awarding
25 damages and entry of final judgment;

26 (g) That 3B has directly infringed the Patents-in-Suit.

27 (h) That 3B has induced infringement of the Patents-in-Suit;
28

1 (i) A declaration that 3B's importation, use, sale, or offer for sale of the
2 Accused Nasal Masks infringes and would infringe the '587 Patent and the '772
3 Patent.

4 (j) That 3B, and its officers, agents, servants, employees, and those in
5 active concert or participation with them directly or indirectly, be enjoined from
6 infringing the Patents-in-Suit;

7 (k) That 3B pay to ResMed the damages resulting from BMC's
8 infringement of the Patents-in-Suit, together with interest and costs, and all other
9 damages permitted by 35 U.S.C. § 284;

10 (l) That 3B be ordered to account for additional damages for any and all
11 periods of infringement not included in the damages awarded by the Court or jury,
12 including specifically any time periods between any order or verdict awarding
13 damages and entry of final judgment; and

14 (m) That ResMed be awarded such other equitable or legal relief as this
15 Court deems just and proper under the circumstances.

16
17 **DEMAND FOR JURY TRIAL**

18 138. Pursuant to Federal Rule of Civil Procedure 38, ResMed demands a
19 jury trial on all issues so triable.
20

21 Dated: May 29, 2013

FISH & RICHARDSON P.C.

22
23 By: /s/ Roger A. Denning

Roger A. Denning

24
25 Attorneys for Plaintiffs RESMED INC.,
26 RESMED CORP, and RESMED LTD
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