

1 Roger A. Denning, SBN 228998, denning@fr.com
2 Scott A. Penner, SBN 253716, penner@fr.com
3 Fish & Richardson P.C.
4 12390 El Camino Real
5 San Diego, CA 92130
6 Phone: 858-678-5070 / Fax: 858-678-5099

7 Frank E. Scherkenbach, SBN 142549, scherkenbach@fr.com
8 Fish & Richardson P.C.
9 One Marina Park Dr.
10 Boston, MA 02210
11 Phone: 617-542-5070 / Fax: 617-542-8906

12 *Attorneys for Plaintiffs*

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 RESMED INC., a Delaware Corporation,
16 RESMED CORP, a Minnesota
17 Corporation, and RESMED LTD, an
18 Australian Corporation,

19 Plaintiffs,

20 v.

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

26 Defendants.

Case No. 13-CV-01246 CAB WMC

**FIRST AMENDED 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. On information and belief, 3B Products is affiliated with BMC.

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. 7,614,398 entitled “Humidifier With Structure To
10 Prevent Backflow Of Liquid Through The Humidifier Inlet,” (hereinafter
11 “the ’398 patent”), which was duly and legally issued on November 10, 2009. The
12 ’398 patent is valid, enforceable, and currently in full force and effect. A copy of
13 the ’398 patent is attached as Exhibit A.

14 16. ResMed Inc. is the exclusive licensee of the ’398 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. 7,938,116 entitled “Ergonomic And Adjustable
18 Respiratory Mask Assembly With Headgear Assembly,” (hereinafter
19 “the ’116 patent”), which was duly and legally issued on May 10, 2011. The ’116
20 patent is valid, enforceable, and currently in full force and effect. A copy of the
21 ’116 patent is attached as Exhibit B.

22 18. ResMed Inc. is the exclusive licensee of the ’116 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. 7,341,060 entitled “Ergonomic And Adjustable
26 Respiratory Mask Assembly With Headgear Assembly,” (hereinafter
27 “the ’060 patent”), which was duly and legally issued on March 11, 2008. The ’060
28

1 patent is valid, enforceable, and currently in full force and effect. A copy of the
2 '060 patent is attached as Exhibit C.

3 20. ResMed Inc. is the exclusive licensee of the '060 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. 8,312,883 entitled "Nasal Assembly," (hereinafter
7 "the '883 patent"), which was duly and legally issued on November 20, 2012. The
8 '883 patent is valid, enforceable, and currently in full force and effect. A copy of
9 the '883 patent is attached as Exhibit D.

10 22. ResMed Inc. is the exclusive licensee of the '883 patent and has
11 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

12 23. ResMed Ltd is the owner by assignment of all right, title, and interest
13 in and to United States Patent No. 7,178,527 entitled "Nasal Mask and Mask
14 Cushion Therefor," (hereinafter "the '527 patent"), which was duly and legally
15 issued on February 20, 2007. The '527 patent is valid, enforceable, and currently in
16 full force and effect. A copy of the '527 patent is attached as Exhibit E.

17 24. ResMed Inc. is the exclusive licensee of the '527 patent and has
18 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

19 25. ResMed Ltd is the owner by assignment of all right, title, and interest
20 in and to United States Patent No. 7,950,392 entitled "Cushion and Mask
21 Therefor," (hereinafter "the '392 patent"), which was duly and legally issued on
22 May 31, 2011. The '392 patent is valid, enforceable, and currently in full force and
23 effect. A copy of the '392 patent is attached as Exhibit F.

24 26. ResMed Inc. is the exclusive licensee of the '392 patent and has
25 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

26 27. ResMed Ltd is the owner by assignment of all right, title, and interest
27 in and to United States Patent No. 7,926,487 entitled "Respiratory Mask Having
28 Gas Washout Vent and Gas Washout Vent Assembly for a Respiratory Mask,"

1 (hereinafter “the ’487 patent”), which was duly and legally issued on April 19, 2011.
2 The ’487 patent is valid, enforceable, and currently in full force and effect. A copy
3 of the ’487 patent is attached as Exhibit G.

4 28. ResMed Inc. is the exclusive licensee of the ’487 patent and has
5 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

6 29. ResMed Ltd is the owner by assignment of all right, title, and interest
7 in and to United States Patent No. 7,997,267 entitled “Ergonomic and Adjustable
8 Respiratory Mask Assembly with Elbow Assembly,” (hereinafter “the ’267 patent”),
9 which was duly and legally issued on August 16, 2011. The ’267 patent is valid,
10 enforceable, and currently in full force and effect. A copy of the ’267 patent is
11 attached as Exhibit H.

12 30. ResMed Inc. is the exclusive licensee of the ’267 patent and has
13 exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary

14 31. As used herein, the term “Patents-in-Suit” means individually and/or
15 collectively the ’060 patent, the ’883 patent, the ’116 patent, the ’398 patent, the
16 ’527 patent, the ’392 patent, the ’487 patent, and the ’267 patent.

17 **BACKGROUND**

18 32. ResMed is a leading developer, manufacturer and distributor of medical
19 equipment for treating, diagnosing, and managing sleep-disordered breathing and
20 other respiratory disorders. The company is dedicated to developing innovative
21 products to improve the lives of those who suffer from these conditions and to
22 increasing awareness among patients and healthcare professionals of the potentially
23 serious health consequences of untreated sleep-disordered breathing (sometimes
24 referred to as “SDB”). Since its founding in 1989, ResMed has focused on
25 developing and commercializing systems for the treatment of obstructive sleep
26 apnea (“OSA”), a major subset of SDB. ResMed’s development of innovative
27 therapies for the treatment of OSA has resulted in over 3,000 patents granted or
28

1 pending worldwide, and its product line incorporates technology that is a highly
2 effective and proven way to treat OSA.

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

15 34. ResMed marks its patents on some products and marks all of its
16 products on its website at: www.resmed.com/ip.

17 35. On information and belief, BMC, on its own and/or through its
18 subsidiaries, is in the business of manufacturing, packaging, importing, selling,
19 offering to sell, and/or distributing a variety of sleep-disordered breathing treatment
20 systems and components thereof including (a) flow generators, including but not
21 limited to, BMC's CPAP machines, such as the BMC-630A and BMC-630C ("the
22 Accused Machines"); (b) nasal pillows, including, but not limited to, BMC's
23 FeaLite product line and 3B's Willow product line ("the Accused Nasal Pillows");
24 and (c) masks, including, but not limited to BMC's iVolve product line ("the
25 Accused Nasal Masks"). As used hereinafter, the phrase "Accused Products" shall
26 mean individually and collectively, including rebranded products, the Accused
27 Machines, the Accused Nasal Masks and the Accused Nasal Pillows.
28

1 36. For example, on information and belief, the 3B Willow and BMC
2 FeaLite are the same products with different branding. On information and belief,
3 BMC manufactures the nasal pillow patient interface with the brand name
4 “FeaLite.” 3B, the U.S. subsidiary of BMC, imports the FeaLite into the United
5 States and sells it under the brand name “Willow.”

6 37. On information and belief, in March 2013, Defendants imported an
7 iVolve mask into the United States where it was displayed at a trade show in Las
8 Vegas, NV. On information and belief, this was done in anticipation of offering for
9 sale and selling the iVolve in the United States.

10 38. On information and belief, Defendants have completed the creation of
11 marketing materials, including specifications and user manuals, for the iVolve.
12 Defendants have also created multiple webpages, accessible in the United States,
13 and in this jurisdiction, marketing the iVolve. On information and belief,
14 Defendants have undertaken this activity in anticipation of offering to sell and
15 selling the Accused Nasal Masks in the United States.

16 39. On information and belief, BMC offers for sale, sells, licenses, and/or
17 distributes the Accused Products in the United States, including within this district,
18 and/or imports the Accused Products into the United States.

19 40. 3B is an importer and seller of durable medical equipment such as
20 sleep-disordered breathing treatment systems and components thereof. 3B markets
21 and sells the Accused Products in the United States.

22 41. On information and belief, 3B obtains the Accused Products from
23 BMC and sells them in the United States and this district.

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

27 43. On information and belief, Defendants were aware of ResMed’s
28 products that practice the patents identified in this Complaint. On information and

1 belief, because Defendants were aware of ResMed's products, Defendants were also
2 aware of ResMed patents as a result of patent marking, including the marking on
3 ResMed's website. On information and belief, Defendants' acts of infringement of
4 the patents identified below have occurred with knowledge of ResMed's rights in its
5 patents or with willful blindness thereto.

6 **FIRST CLAIM FOR RELIEF**

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

8 44. The allegations of Paragraphs 1-43 are incorporated herein by
9 reference.

10 45. BMC has directly infringed the claims of the '060 patent, literally
11 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
12 within the United States, and/or importing into the United States, the Accused Nasal
13 Pillows.

14 46. ResMed is well-known in the industry for making and selling SDB
15 products and ResMed is well-known in the industry to be an innovator. ResMed
16 also marks its products with its patents. Therefore, on information and belief, BMC
17 either must have known about the '060 patent or must have been willfully blind to it
18 at the time they engaged in their infringing activities and, in any event, was aware of
19 the '060 patent at least as early as the service date of this complaint.

20 47. On information and belief, BMC has induced and continues to induce
21 infringement of the '060 patent by actively encouraging customers and others to
22 import, sell and/or use the Accused Nasal Pillows in the United States with
23 knowledge that such import, sale or use would infringe the '060 patent. On
24 information and belief, those customers and others in fact infringed the '060 patent
25 by importing, selling and/or using the Accused Nasal Pillows in the United States.

26 48. As a result of BMC's infringement of the '060 patent, ResMed has
27 suffered and will continue to suffer damage. ResMed is entitled to recover from
28

1 BMC the damages adequate to compensate for such infringement, which have yet to
2 be determined.

3 49. BMC's acts of infringement have caused and will continue to cause
4 irreparable harm to ResMed unless and until enjoined by this Court.

5 **SECOND CLAIM FOR RELIEF**

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

7 50. The allegations of Paragraphs 1-43 are incorporated herein by
8 reference.

9 51. BMC has directly infringed the claims of the '116 patent, literally
10 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
11 within the United States, and/or importing into the United States, the Accused Nasal
12 Pillows.

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

19 53. On information and belief, BMC has induced and continues to induce
20 infringement of the '116 patent by actively encouraging customers and others to
21 import, sell and/or use the Accused Nasal Pillows in the United States with
22 knowledge that such import, sale or use would infringe the '116 patent. On
23 information and belief, those customers and others in fact infringed the '116 patent
24 by importing, selling and/or using the Accused Nasal Pillows in the United States.

25 54. As a result of BMC's infringement of the '116 patent, ResMed has
26 suffered and will continue to suffer damage. ResMed is entitled to recover from
27 BMC the damages adequate to compensate for such infringement, which have yet to
28 be determined.

1 55. BMC's acts of infringement have caused and will continue to cause
2 irreparable harm to ResMed unless and until enjoined by this Court.

3 **THIRD CLAIM FOR RELIEF**

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

5 56. The allegations of Paragraphs 1-43 are incorporated herein by
6 reference.

7 57. BMC has directly infringed the claims of the '883 patent, literally
8 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
9 within the United States, and/or importing into the United States, the Accused Nasal
10 Pillows.

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

17 59. On information and belief, BMC has induced and continues to induce
18 infringement of the '883 patent by actively encouraging customers and others to
19 import, sell and/or use the Accused Nasal Pillows in the United States with
20 knowledge that such import, sale or use would infringe the '883 patent. On
21 information and belief, those customers and others in fact infringed the '883 patent
22 by importing, selling and/or using the Accused Nasal Pillows in the United States.

23 60. As a result of BMC's infringement of the '883 patent, ResMed has
24 suffered and will continue to suffer damage. ResMed is entitled to recover from
25 BMC the damages adequate to compensate for such infringement, which have yet to
26 be determined.

27 61. BMC's acts of infringement have caused and will continue to cause
28 irreparable harm to ResMed unless and until enjoined by this Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CLAIM FOR RELIEF

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

62. The allegations of Paragraphs 1-43 are incorporated herein by reference.

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

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

65. On information and belief, BMC has induced and continues to induce infringement of the '398 patent by actively encouraging customers and others to import, sell and/or use the Accused Machines in the United States with knowledge that such import, sale or use would infringe the '398 patent. On information and belief, those customers and others in fact infringed the '398 patent by importing, selling and/or using the Accused Machines in the United States.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CLAIM FOR RELIEF

BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,178,527

68. The allegations of Paragraphs 1-43 are incorporated herein by reference.

69. BMC has directly infringed the claims of the '527 patent, literally and/or under the doctrine of equivalents, by using, offering to sell, and/or selling within the United States, and/or importing into the United States, the Accused Nasal Masks and the Accused Nasal Pillows.

70. ResMed is well-known in the industry for making and selling SDB products and ResMed is well-known in the industry to be an innovator. ResMed also marks its products with its patents. Therefore, on information and belief, BMC either must have known about the '527 patent or must have been willfully blind to it at the time they engaged in their infringing activities and, in any event, was aware of the '527 patent at least as early as the service date of this complaint.

71. On information and belief, BMC has induced and continues to induce infringement of the '527 patent by actively encouraging customers and others to import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in the United States with knowledge that such import, sale or use would infringe the '527 patent. On information and belief, those customers and others in fact infringed the '527 patent by importing, selling and/or using the Accused Nasal Masks and the Accused Nasal Pillows in the United States.

72. As a result of BMC's infringement of the '527 patent, ResMed has suffered and will continue to suffer damage. ResMed is entitled to recover from BMC the damages adequate to compensate for such infringement, which have yet to be determined.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT OF BMC'S INFRINGEMENT OF U.S.
PATENT NO. 7,178,527

74. The allegations of Paragraphs 1-43 are incorporated herein by reference.

75. A substantial controversy exists between BMC and ResMed regarding the Accused Nasal Masks which, when imported into the United States, sold, offered for sale, or used within the United States, would infringe literally, and/or under the doctrine of equivalents, the '527 patent.

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

77. The controversy is of sufficient immediacy and reality to warrant the issuance of declaratory judgment.

78. On information and belief, BMC will use at least its established distribution network in the United States, which includes 3B, to import and sell the Accused Nasal Masks. As such, BMC's actions would induce infringement of the '527 patent by actively encouraging customers and others to import, sell and/or use the Accused Nasal Masks in the United States with knowledge that such import, sale or use would infringe the '527 patent. On information and belief, those customers and others would in fact infringe the '527 patent by importing, selling and/or using the Accused Nasal Masks in the United States.

1 79. If BMC is permitted to infringe the '527 patent, ResMed will suffer
2 damage. ResMed would be entitled to recover from BMC the damages adequate to
3 compensate for such infringement, which have yet to be determined.

4 80. BMC's acts of infringement will cause irreparable harm to ResMed
5 unless and until enjoined by this Court.

6 **SEVENTH CLAIM FOR RELIEF**

7 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,950,392**

8 81. The allegations of Paragraphs 1-43 are incorporated herein by
9 reference.

10 82. BMC has directly infringed the claims of the '392 patent, literally
11 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
12 within the United States, and/or importing into the United States, the Accused Nasal
13 Masks.

14 83. ResMed is well-known in the industry for making and selling SDB
15 products and ResMed is well-known in the industry to be an innovator. ResMed
16 also marks its products with its patents. Therefore, on information and belief, BMC
17 either must have known about the '392 patent or must have been willfully blind to it
18 at the time they engaged in their infringing activities and, in any event, was aware of
19 the '392 patent at least as early as the service date of this complaint.

20 84. On information and belief, BMC has induced and continues to induce
21 infringement of the '392 patent by actively encouraging customers and others to
22 import, sell and/or use the Accused Nasal Masks in the United States with
23 knowledge that such import, sale or use would infringe the '392 patent. On
24 information and belief, those customers and others in fact infringed the '392 patent
25 by importing, selling and/or using the Accused Nasal Masks in the United States.

26 85. As a result of BMC's infringement of the '392 patent, ResMed has
27 suffered and will continue to suffer damage. ResMed is entitled to recover from
28

1 BMC the damages adequate to compensate for such infringement, which have yet to
2 be determined.

3 86. BMC's acts of infringement have caused and will continue to cause
4 irreparable harm to ResMed unless and until enjoined by this Court.

5 **EIGHTH CLAIM FOR RELIEF**

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

7 **PATENT NO. 7,950,392**

8 87. The allegations of Paragraphs 1-43 are incorporated herein by
9 reference.

10 88. A substantial controversy exists between BMC and ResMed regarding
11 the Accused Nasal Masks which, when imported into the United States, sold,
12 offered for sale, or used within the United States, would infringe literally, and/or
13 under the doctrine of equivalents, the '392 patent.

14 89. On information and belief, BMC has taken active steps to promote the
15 Accused Nasal Masks in the United States, including in this jurisdiction, in
16 preparation for actual sales. For example, BMC has created product marketing
17 materials and a website, accessible in the United States, including within this
18 jurisdiction, regarding the Accused Nasal Masks. Moreover, BMC has actively
19 promoted the product in the United States by displaying and marketing the Accused
20 Nasal Masks at trade shows, including at least one in March 2013 in Las Vegas, NV.

21 90. The controversy is of sufficient immediacy and reality to warrant the
22 issuance of declaratory judgment.

23 91. On information and belief, BMC will use at least its established
24 distribution network in the United States, which includes 3B, to import and sell the
25 Accused Nasal Masks. As such, BMC's actions would induce infringement of the
26 '392 patent by actively encouraging customers and others to import, sell and/or use
27 the Accused Nasal Masks in the United States with knowledge that such import, sale
28 or use would infringe the '392 patent. On information and belief, those customers

1 and others would in fact infringe the '392 patent by importing, selling and/or using
2 the Accused Nasal Masks in the United States.

3 92. If BMC is permitted to infringe the '392 patent, ResMed will suffer
4 damage. ResMed would be entitled to recover from BMC the damages adequate to
5 compensate for such infringement, which have yet to be determined.

6 93. BMC's acts of infringement will cause irreparable harm to ResMed
7 unless and until enjoined by this Court.

8 **NINTH CLAIM FOR RELIEF**

9 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,926,487**

10 94. The allegations of Paragraphs 1-43 are incorporated herein by
11 reference.

12 95. BMC has directly infringed the claims of the '487 patent, literally
13 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
14 within the United States, and/or importing into the United States, the Accused Nasal
15 Masks and the Accused Nasal Pillows.

16 96. ResMed is well-known in the industry for making and selling SDB
17 products and ResMed is well-known in the industry to be an innovator. ResMed
18 also marks its products with its patents. Therefore, on information and belief, BMC
19 either must have known about the '487 patent or must have been willfully blind to it
20 at the time they engaged in their infringing activities and, in any event, was aware of
21 the '487 patent at least as early as the service date of this complaint.

22 97. On information and belief, BMC has induced and continues to induce
23 infringement of the '487 patent by actively encouraging customers and others to
24 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
25 the United States with knowledge that such import, sale or use would infringe the
26 '487 patent. On information and belief, those customers and others in fact infringed
27 the '487 patent by importing, selling and/or using the Accused Nasal Masks and the
28 Accused Nasal Pillows in the United States.

1 98. As a result of BMC's infringement of the '487 patent, ResMed has
2 suffered and will continue to suffer damage. ResMed is entitled to recover from
3 BMC the damages adequate to compensate for such infringement, which have yet to
4 be determined.

5 99. BMC's acts of infringement have caused and will continue to cause
6 irreparable harm to ResMed unless and until enjoined by this Court.

7 **TENTH CLAIM FOR RELIEF**
8 **DECLARATORY JUDGMENT OF BMC'S INFRINGEMENT OF U.S.**
9 **PATENT NO. 7,926,487**

10 100. The allegations of Paragraphs 1-43 are incorporated herein by
11 reference.

12 101. A substantial controversy exists between BMC and ResMed regarding
13 the Accused Nasal Masks which, when imported into the United States, sold,
14 offered for sale, or used within the United States, would infringe literally, and/or
15 under the doctrine of equivalents, the '487 patent.

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

23 103. The controversy is of sufficient immediacy and reality to warrant the
24 issuance of declaratory judgment.

25 104. On information and belief, BMC will use at least its established
26 distribution network in the United States, which includes 3B, to import and sell the
27 Accused Nasal Masks. As such, BMC's actions would induce infringement of the
28 '487 patent by actively encouraging customers and others to import, sell and/or use

1 the Accused Nasal Masks in the United States with knowledge that such import, sale
2 or use would infringe the '487 patent. On information and belief, those customers
3 and others would in fact infringe the '487 patent by importing, selling and/or using
4 the Accused Nasal Masks in the United States.

5 105. If BMC is permitted to infringe the '487 patent, ResMed will suffer
6 damage. ResMed would be entitled to recover from BMC the damages adequate to
7 compensate for such infringement, which have yet to be determined.

8 106. BMC's acts of infringement will cause irreparable harm to ResMed
9 unless and until enjoined by this Court.

10 **ELEVENTH CLAIM FOR RELIEF**

11 **BMC'S INFRINGEMENT OF U.S. PATENT NO. 7,997,267**

12 107. The allegations of Paragraphs 1-43 are incorporated herein by
13 reference.

14 108. BMC has directly infringed the claims of the '267 patent, literally
15 and/or under the doctrine of equivalents, by using, offering to sell, and/or selling
16 within the United States, and/or importing into the United States, the Accused Nasal
17 Masks and the Accused Nasal Pillows.

18 109. 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, BMC
21 either must have known about the '267 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 '527 patent at least as early as the service date of this complaint.

24 110. On information and belief, BMC has induced and continues to induce
25 infringement of the '267 patent by actively encouraging customers and others to
26 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
27 the United States with knowledge that such import, sale or use would infringe the
28 '267 patent. On information and belief, those customers and others in fact infringed

1 the '267 patent by importing, selling and/or using the Accused Nasal Masks and the
2 Accused Nasal Pillows in the United States.

3 111. As a result of BMC's infringement of the '267 patent, ResMed has
4 suffered and will continue to suffer damage. ResMed is entitled to recover from
5 BMC the damages adequate to compensate for such infringement, which have yet to
6 be determined.

7 112. BMC's acts of infringement have caused and will continue to cause
8 irreparable harm to ResMed unless and until enjoined by this Court.

9 **TWELFTH CLAIM FOR RELIEF**

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

11 **PATENT NO. 7,997,267**

12 113. The allegations of Paragraphs 1-43 are incorporated herein by
13 reference.

14 114. A substantial controversy exists between BMC and ResMed regarding
15 the Accused Nasal Masks which, when imported into the United States, sold,
16 offered for sale, or used within the United States, would infringe literally, and/or
17 under the doctrine of equivalents, the '267 patent.

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

25 116. The controversy is of sufficient immediacy and reality to warrant the
26 issuance of declaratory judgment.

27 117. On information and belief, BMC will use at least its established
28 distribution network in the United States, which includes 3B, to import and sell the

1 Accused Nasal Masks. As such, BMC's actions would induce infringement of the
2 '267 patent by actively encouraging customers and others to import, sell and/or use
3 the Accused Nasal Masks in the United States with knowledge that such import, sale
4 or use would infringe the '267 patent. On information and belief, those customers
5 and others would in fact infringe the '267 patent by importing, selling and/or using
6 the Accused Nasal Masks in the United States.

7 118. If BMC is permitted to infringe the '267 patent, ResMed will suffer
8 damage. ResMed would be entitled to recover from BMC the damages adequate to
9 compensate for such infringement, which have yet to be determined.

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

12 **THIRTEENTH CLAIM FOR RELIEF**

13 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,341,060**

14 120. The allegations of Paragraphs 1-43 are incorporated herein by
15 reference.

16 121. 3B has directly infringed the claims of the '060 patent, literally and/or
17 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
18 United States, and/or importing into the United States, the Accused Nasal Pillows.

19 122. 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 '060 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 '060 patent at least as early as the service date of this complaint.

25 123. On information and belief, 3B has induced and continues to induce
26 infringement of the '060 patent by actively encouraging customers and others to
27 import, sell and/or use the Accused Nasal Pillows in the United States with
28 knowledge that such import, sale or use would infringe the '060 patent. On

1 information and belief, those customers and others in fact infringed the '060 patent
2 by importing, selling and/or using the Accused Nasal Pillows in the United States.

3 124. As a result of 3B's infringement of the '060 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.

7 125. 3B's acts of infringement have caused and will continue to cause
8 irreparable harm to ResMed unless and until enjoined by this Court.

9 **FOURTEENTH CLAIM FOR RELIEF**

10 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,938,116**

11 126. The allegations of Paragraphs 1-43 are incorporated herein by
12 reference.

13 127. 3B has directly infringed the claims of the '116 patent, literally and/or
14 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
15 United States, and/or importing into the United States, the Accused Nasal Pillows.

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

22 129. On information and belief, 3B has induced and continues to induce
23 infringement of the '116 patent by actively encouraging customers and others to
24 import, sell and/or use the Accused Nasal Pillows in the United States with
25 knowledge that such import, sale or use would infringe the '116 patent. On
26 information and belief, those customers and others in fact infringed the '116 patent
27 by importing, selling and/or using the Accused Nasal Pillows in the United States.
28

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

5 131. 3B's acts of infringement have caused and will continue to cause
6 irreparable harm to ResMed unless and until enjoined by this Court.

7 **FIFTEENTH CLAIM FOR RELIEF**

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

9 132. The allegations of Paragraphs 1-43 are incorporated herein by
10 reference.

11 133. 3B has directly infringed the claims of the '883 patent, literally and/or
12 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
13 United States, and/or importing into the United States, the Accused Nasal Pillows.

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

20 135. On information and belief, 3B has induced and continues to induce
21 infringement of the '883 patent by actively encouraging customers and others to
22 import, sell and/or use the Accused Nasal Pillows in the United States with
23 knowledge that such import, sale or use would infringe the '883 patent. On
24 information and belief, those customers and others in fact infringed the '883 patent
25 by importing, selling and/or using the Accused Nasal Pillows in the United States.

26 136. As a result of 3B's infringement of the '883 patent, ResMed has
27 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
28

1 the damages adequate to compensate for such infringement, which have yet to be
2 determined.

3 137. 3B's acts of infringement have caused and will continue to cause
4 irreparable harm to ResMed unless and until enjoined by this Court.

5 **SIXTEENTH CLAIM FOR RELIEF**

6 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,614,398**

7 138. The allegations of Paragraphs 1-43 are incorporated herein by
8 reference.

9 139. 3B has directly infringed the claims of the '398 patent, literally and/or
10 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
11 United States, and/or importing into the United States, at least the Accused
12 Machines.

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

19 141. On information and belief, 3B has induced and continues to induce
20 infringement of the '398 patent by actively encouraging customers and others to
21 import, sell and/or use the Accused Machines in the United States with knowledge
22 that such import, sale or use would infringe the '398 patent. On information and
23 belief, those customers and others in fact infringed the '398 patent by importing,
24 selling and/or using the Accused Machines in the United States.

25 142. As a result of 3B's infringement of the '398 patent, ResMed has
26 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
27 the damages adequate to compensate for such infringement, which have yet to be
28

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

3 **SEVENTEENTH CLAIM FOR RELIEF**

4 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,178,527**

5 143. The allegations of Paragraphs 1-43 are incorporated herein by
6 reference.

7 144. 3B has directly infringed the claims of the '527 patent, literally and/or
8 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
9 United States, and/or importing into the United States, the Accused Nasal Masks
10 and the Accused Nasal Pillows.

11 145. ResMed is well-known in the industry for making and selling SDB
12 products and ResMed is well-known in the industry to be an innovator. ResMed
13 also marks its products with its patents. Therefore, on information and belief, 3B
14 either must have known about the '527 patent or must have been willfully blind to it
15 at the time they engaged in their infringing activities and, in any event, was aware of
16 the '527 patent at least as early as the service date of this complaint.

17 146. On information and belief, 3B has induced and continues to induce
18 infringement of the '527 patent by actively encouraging customers and others to
19 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
20 the United States with knowledge that such import, sale or use would infringe the
21 '527 patent. On information and belief, those customers and others in fact infringed
22 the '527 patent by importing, selling and/or using the Accused Nasal Masks and the
23 Accused Nasal Pillows in the United States.

24 147. As a result of 3B's infringement of the '527 patent, ResMed has
25 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
26 the damages adequate to compensate for such infringement, which have yet to be
27 determined.
28

1 148. 3B's acts of infringement have caused and will continue to cause
2 irreparable harm to ResMed unless and until enjoined by this Court.

3 **EIGHTEENTH CLAIM FOR RELIEF**

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

5 **PATENT NO. 7,178,527**

6 149. The allegations of Paragraphs 1-43 are incorporated herein by
7 reference.

8 150. A substantial controversy exists between 3B and ResMed regarding the
9 Accused Nasal Masks which, when imported into the United States, sold, offered for
10 sale, or used within the United States, would infringe literally, and/or under the
11 doctrine of equivalents, the '527 patent.

12 151. On information and belief, 3B has taken active steps to promote the
13 Accused Nasal Masks in the United States, including in this jurisdiction, in
14 preparation for actual sales. For example, 3B has created product marketing
15 materials and a website, accessible in the United States, including within this
16 jurisdiction, regarding the Accused Nasal Masks. Moreover, 3B has actively
17 promoted the product in the United States by displaying and marketing the Accused
18 Nasal Masks at trade shows, including at least one in March 2013 in Las Vegas, NV.

19 152. The controversy is of sufficient immediacy and reality to warrant the
20 issuance of declaratory judgment.

21 153. On information and belief, 3B will use at least its established
22 distribution network in the United States to import and sell the Accused Nasal
23 Masks. As such, 3B's actions would induce infringement of the '527 patent by
24 actively encouraging customers and others to import, sell and/or use the Accused
25 Nasal Masks in the United States with knowledge that such import, sale or use
26 would infringe the '527 patent. On information and belief, those customers and
27 others would in fact infringe the '527 patent by importing, selling and/or using the
28 Accused Nasal Masks in the United States.

1 154. If 3B is permitted to infringe the '527 patent, ResMed will suffer
2 damage. ResMed would be entitled to recover from 3B the damages adequate to
3 compensate for such infringement, which have yet to be determined.

4 155. 3B's acts of infringement will cause irreparable harm to ResMed unless
5 and until enjoined by this Court.

6 **NINETEENTH CLAIM FOR RELIEF**

7 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,950,392**

8 156. The allegations of Paragraphs 1-43 are incorporated herein by
9 reference.

10 157. 3B has directly infringed the claims of the '392 patent, literally and/or
11 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
12 United States, and/or importing into the United States, the Accused Nasal Masks.

13 158. ResMed is well-known in the industry for making and selling SDB
14 products and ResMed is well-known in the industry to be an innovator. ResMed
15 also marks its products with its patents. Therefore, on information and belief, 3B
16 either must have known about the '392 patent or must have been willfully blind to it
17 at the time they engaged in their infringing activities and, in any event, was aware of
18 the '392 patent at least as early as the service date of this complaint.

19 159. On information and belief, 3B has induced and continues to induce
20 infringement of the '392 patent by actively encouraging customers and others to
21 import, sell and/or use the Accused Nasal Masks in the United States with
22 knowledge that such import, sale or use would infringe the '392 patent. On
23 information and belief, those customers and others in fact infringed the '392 patent
24 by importing, selling and/or using the Accused Nasal Masks in the United States.

25 160. As a result of 3B's infringement of the '392 patent, ResMed has
26 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
27 the damages adequate to compensate for such infringement, which have yet to be
28 determined.

1 161. 3B's acts of infringement have caused and will continue to cause
2 irreparable harm to ResMed unless and until enjoined by this Court.

3 **TWENTIETH CLAIM FOR RELIEF**

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

5 **PATENT NO. 7,950,392**

6 162. The allegations of Paragraphs 1-43 are incorporated herein by
7 reference.

8 163. A substantial controversy exists between 3B and ResMed regarding the
9 Accused Nasal Masks which, when imported into the United States, sold, offered for
10 sale, or used within the United States, would infringe literally, and/or under the
11 doctrine of equivalents, the '392 patent.

12 164. On information and belief, 3B has taken active steps to promote the
13 Accused Nasal Masks in the United States, including in this jurisdiction, in
14 preparation for actual sales. For example, 3B has created product marketing
15 materials and a website, accessible in the United States, including within this
16 jurisdiction, regarding the Accused Nasal Masks. Moreover, 3B has actively
17 promoted the product in the United States by displaying and marketing the Accused
18 Nasal Masks at trade shows, including at least one in March 2013 in Las Vegas, NV.

19 165. The controversy is of sufficient immediacy and reality to warrant the
20 issuance of declaratory judgment.

21 166. On information and belief, 3B will use at least its established
22 distribution network in the United States to import and sell the Accused Nasal
23 Masks. As such, 3B's actions would induce infringement of the '392 patent by
24 actively encouraging customers and others to import, sell and/or use the Accused
25 Nasal Masks in the United States with knowledge that such import, sale or use
26 would infringe the '392 patent. On information and belief, those customers and
27 others would in fact infringe the '392 patent by importing, selling and/or using the
28 Accused Nasal Masks in the United States.

1 167. If 3B is permitted to infringe the '392 patent, ResMed will suffer
2 damage. ResMed would be entitled to recover from 3B the damages adequate to
3 compensate for such infringement, which have yet to be determined.

4 168. 3B's acts of infringement will cause irreparable harm to ResMed unless
5 and until enjoined by this Court.

6 **TWENTY-FIRST CLAIM FOR RELIEF**

7 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,926,487**

8 169. The allegations of Paragraphs 1-43 are incorporated herein by
9 reference.

10 170. 3B has directly infringed the claims of the '487 patent, literally and/or
11 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
12 United States, and/or importing into the United States, the Accused Nasal Masks
13 and the Accused Nasal Pillows.

14 171. ResMed is well-known in the industry for making and selling SDB
15 products and ResMed is well-known in the industry to be an innovator. ResMed
16 also marks its products with its patents. Therefore, on information and belief, 3B
17 either must have known about the '487 patent or must have been willfully blind to it
18 at the time they engaged in their infringing activities and, in any event, was aware of
19 the '487 patent at least as early as the service date of this complaint.

20 172. On information and belief, 3B has induced and continues to induce
21 infringement of the '487 patent by actively encouraging customers and others to
22 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
23 the United States with knowledge that such import, sale or use would infringe the
24 '487 patent. On information and belief, those customers and others in fact infringed
25 the '487 patent by importing, selling and/or using the Accused Nasal Masks and the
26 Accused Nasal Pillows in the United States.

27 173. As a result of 3B's infringement of the '487 patent, ResMed has
28 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B

1 the damages adequate to compensate for such infringement, which have yet to be
2 determined.

3 174. 3B's acts of infringement have caused and will continue to cause
4 irreparable harm to ResMed unless and until enjoined by this Court.

5 **TWENTY-SECOND CLAIM FOR RELIEF**
6 **DECLARATORY JUDGMENT OF 3B'S INFRINGEMENT OF U.S.**

7 **PATENT NO. 7,926,487**

8 175. The allegations of Paragraphs 1-43 are incorporated herein by
9 reference.

10 176. A substantial controversy exists between 3B and ResMed regarding the
11 Accused Nasal Masks which, when imported into the United States, sold, offered for
12 sale, or used within the United States, would infringe literally, and/or under the
13 doctrine of equivalents, the '487 patent.

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

21 178. The controversy is of sufficient immediacy and reality to warrant the
22 issuance of declaratory judgment.

23 179. On information and belief, 3B will use at least its established
24 distribution network in the United States to import and sell the Accused Nasal
25 Masks. As such, 3B's actions would induce infringement of the '487 patent by
26 actively encouraging customers and others to import, sell and/or use the Accused
27 Nasal Masks in the United States with knowledge that such import, sale or use
28 would infringe the '487 patent. On information and belief, those customers and

1 others would in fact infringe the '487 patent by importing, selling and/or using the
2 Accused Nasal Masks in the United States.

3 180. If 3B is permitted to infringe the '487 patent, ResMed will suffer
4 damage. ResMed would be entitled to recover from 3B the damages adequate to
5 compensate for such infringement, which have yet to be determined.

6 181. 3B's acts of infringement will cause irreparable harm to ResMed unless
7 and until enjoined by this Court.

8 **TWENTY-THIRD CLAIM FOR RELIEF**

9 **3B'S INFRINGEMENT OF U.S. PATENT NO. 7,997,267**

10 182. The allegations of Paragraphs 1-43 are incorporated herein by
11 reference.

12 183. 3B has directly infringed the claims of the '267 patent, literally and/or
13 under the doctrine of equivalents, by using, offering to sell, and/or selling within the
14 United States, and/or importing into the United States, the Accused Nasal Masks
15 and the Accused Nasal Pillows.

16 184. ResMed is well-known in the industry for making and selling SDB
17 products and ResMed is well-known in the industry to be an innovator. ResMed
18 also marks its products with its patents. Therefore, on information and belief, 3B
19 either must have known about the '267 patent or must have been willfully blind to it
20 at the time they engaged in their infringing activities and, in any event, was aware of
21 the '527 patent at least as early as the service date of this complaint.

22 185. On information and belief, 3B has induced and continues to induce
23 infringement of the '267 patent by actively encouraging customers and others to
24 import, sell and/or use the Accused Nasal Masks and the Accused Nasal Pillows in
25 the United States with knowledge that such import, sale or use would infringe the
26 '267 patent. On information and belief, those customers and others in fact infringed
27 the '267 patent by importing, selling and/or using the Accused Nasal Masks and the
28 Accused Nasal Pillows in the United States.

1 186. As a result of 3B's infringement of the '267 patent, ResMed has
2 suffered and will continue to suffer damage. ResMed is entitled to recover from 3B
3 the damages adequate to compensate for such infringement, which have yet to be
4 determined.

5 187. 3B's acts of infringement have caused and will continue to cause
6 irreparable harm to ResMed unless and until enjoined by this Court.

7 **TWENTY-FOURTH CLAIM FOR RELIEF**
8 **DECLARATORY JUDGMENT OF 3B'S INFRINGEMENT OF U.S.**
9 **PATENT NO. 7,997,267**

10 188. The allegations of Paragraphs 1-43 are incorporated herein by
11 reference.

12 189. A substantial controversy exists between 3B and ResMed regarding the
13 Accused Nasal Masks which, when imported into the United States, sold, offered for
14 sale, or used within the United States, would infringe literally, and/or under the
15 doctrine of equivalents, the '267 patent.

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

23 191. The controversy is of sufficient immediacy and reality to warrant the
24 issuance of declaratory judgment.

25 192. On information and belief, 3B will use at least its established
26 distribution network in the United States to import and sell the Accused Nasal
27 Masks. As such, 3B's actions would induce infringement of the '267 patent by
28 actively encouraging customers and others to import, sell and/or use the Accused

1 Nasal Masks in the United States with knowledge that such import, sale or use
2 would infringe the '267 patent. On information and belief, those customers and
3 others would in fact infringe the '267 patent by importing, selling and/or using the
4 Accused Nasal Masks in the United States.

5 193. If 3B is permitted to infringe the '267 patent, ResMed will suffer
6 damage. ResMed would be entitled to recover from 3B the damages adequate to
7 compensate for such infringement, which have yet to be determined.

8 194. 3B's acts of infringement will cause irreparable harm to ResMed unless
9 and until enjoined by this Court.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, ResMed prays that this Court enters judgment and provides
12 relief as follows:

- 13 (a) That BMC has directly infringed the Patents-in-Suit.
14 (b) That BMC has induced infringement of the Patents-in-Suit;
15 (c) A declaration that BMC's importation, use, sale, or offer for sale of the
16 Accused Nasal Masks infringes and would infringe the '527 patent, the '392 patent,
17 the '487 patent, and the '267 patent.
18 (d) That BMC, and its officers, agents, servants, employees, and those in
19 active concert or participation with them directly or indirectly, be enjoined from
20 infringing the Patents-in-Suit;
21 (e) That BMC pay to ResMed the damages resulting from BMC's
22 infringement of the Patents-in-Suit, together with interest and costs, and all other
23 damages permitted by 35 U.S.C. § 284;
24 (f) That BMC be ordered to account for additional damages for any and all
25 periods of infringement not included in the damages awarded by the Court or jury,
26 including specifically any time periods between any order or verdict awarding
27 damages and entry of final judgment;
28 (g) That 3B has directly infringed the Patents-in-Suit.

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

2 (i) A declaration that 3B's importation, use, sale, or offer for sale of the
3 Accused Nasal Masks infringes and would infringe the '527 patent, the '392 patent,
4 the '487 patent, and the '267 patent.

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

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

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

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

17
18 **DEMAND FOR JURY TRIAL**

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

21
22 Dated: July 19, 2013

FISH & RICHARDSON P.C.

23
24
25 By: /s/ Roger A. Denning
26 Roger A. Denning

27 Attorney for Plaintiff ResMed, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on July 18, 2013, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ LR 5.4(d). Any other counsel of record will be served by U.S. mail or hand delivery.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on July 18, 2013, at San Diego, California.

/s/ Roger A. Denning

Roger A. Denning