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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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FISHER & PAYKEL
HEALTHCARE LIMITED, a New
Zealand corporation

Plaintiff,

v.

RESMED CORP., a Minnesota
corporation,

Defendant.

) Case No. 2:16-cv-6099
)
) **COMPLAINT FOR PATENT**
) **INFRINGEMENT**
) **DEMAND FOR JURY TRIAL**

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

4 **I. THE PARTIES**

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

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

12 **II. JURISDICTION AND VENUE**

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

15 4. Fisher & Paykel Healthcare Inc. is a California corporation having
16 a principal place of business in this district in Irvine, CA 92618.

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

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

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

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

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

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

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

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

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

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

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

27 15. Fisher & Paykel Healthcare Limited is the owner by assignment of
28 U.S. Patent 8,550,072 entitled “Apparatus for Delivering Humidified Gases”

1 (“the ’072 patent”), which the United States Patent and Trademark Office
2 lawfully and duly issued on October 8, 2013. A true and correct copy of the
3 ’072 patent is attached hereto as Exhibit 6.

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

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

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

18 **IV. DEFENDANTS’ ACTIVITIES**

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

25 20. Upon further information and belief, ResMed has made, used,
26 offered to sell, and/or sold within the United States, and/or has imported into the
27 United States, products including at least the AirCurve 10 ASV, AirCurve 10 S,
28 AirCurve 10 VAuto, and AirCurve 10 ST (collectively, “AirCurve 10”).

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

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

9 **V. CLAIMS FOR PATENT INFRINGEMENT**

10 **FIRST CLAIM FOR RELIEF**

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

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

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

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

21 26. For example, upon information and belief, the Swift FX mask
22 includes all of the limitations of Claim 1 of the '807 patent. The Swift FX mask
23 is a patient interface that includes a mask assembly with a mask body sized and
24 shaped to leave the mouth of the user uncovered by the mask when in use. Two
25 nasal pillows extend from the mask body, and in use these nasal pillows rest in a
26 substantially sealed manner against the openings of the nasal cavity of the user.
27 There is a ring engaging the mask body, an elbow rotatably engaged with the
28 ring comprising a plurality of vent holes, a tube or conduit extending from the

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