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FISHER & PAYKEL HEALTHCARE LIMITED

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN 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. '16 CV2068 GPC WVG

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

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

4 **I. THE PARTIES**

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

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

13 **II. JURISDICTION AND VENUE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **IV. DEFENDANTS’ ACTIVITIES**

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

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

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

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

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

11 **V. CLAIMS FOR PATENT INFRINGEMENT**

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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