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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FISHER & PAYKEL HEALTHCARE LIMITED, a New Zealand corporation

Plaintiffs,

v.

RESMED CORP., a Minnesota corporation,

Defendant.

RESMED INC., a Delaware Corporation, RESMED CORP, a Minnesota Corporation, and RESMED LTD, an Australian Corporation,

Counterclaimant,

v.

CASE NO: 16CV2068 GPC WVG

ANSWER OF RESMED CORP TO COMPLAINT FOR PATENT INFRINGEMENT AND COUNTERCLAIMS

JURY TRIAL DEMANDED

Fisher & Paykel Ex. 1405
IPR Petition - USP 9,119,931

FISHER & PAYKEL HEALTHCARE CORPORATION LIMITED, a New Zealand Corporation, FISHER & PAYKEL HEALTHCARE LIMITED, a New Zealand Corporation, FISHER & PAYKEL HEALTHCARE INC., a California Corporation, and FISHER & PAYKEL HEALTHCARE DISTRIBUTION INC., a California Corporation,

Counterclaim-Defendants.

Defendant ResMed Corp ("ResMed Corp") hereby files this Answer and Affirmative Defenses in response to the Complaint for Patent Infringement filed by Plaintiff Fisher & Paykel Healthcare Limited ("FPH"). In addition, ResMed Inc., ResMed Corp, and ResMed Ltd (collectively, "ResMed") file Counterclaims against Counterclaim-Defendants Fisher & Paykel Healthcare Corporation Limited, Fisher & Paykel Healthcare Limited, Fisher & Paykel Healthcare Inc., and Fisher & Paykel Healthcare Distribution Inc. (collectively, "F&P") as follows:

ResMed Corp denies all allegations not expressly admitted herein.

I. THE PARTIES

1. On information and belief, ResMed Corp admits the allegations in paragraph 1 of the Complaint.

2. ResMed Corp admits the allegations in paragraph 2 of the Complaint.

II. JURISDICTION AND VENUE

3. ResMed Corp incorporates by reference its responses to paragraphs 1-2 as if repeated here verbatim.

4. On information and belief, ResMed Corp admits the allegations in paragraph 4 of the Complaint.

5. On information and belief, ResMed Corp admits the allegations in paragraph 5 of the Complaint.

6. ResMed Corp admits that the Complaint alleges a claim for patent infringement arising under the Patent Laws of the United States. ResMed otherwise denies the allegations in paragraph 6 of the Complaint.

7. ResMed Corp admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. ResMed Corp admits that it is subject to personal jurisdiction in California. ResMed Corp otherwise denies the allegations in paragraph 8 of the Complaint.

9. ResMed Corp admits the allegations in paragraph 9 of the Complaint.

III. THE PATENTS IN SUIT

10. ResMed Corp admits that U.S. Patent 8,443,807 ("the '807 Patent") is entitled "Breathing Assistance Apparatus." ResMed Corp admits that the '807 Patent issued on May 21, 2013 and that a copy of the '807 Patent is attached to the Complaint as Exhibit 1. ResMed Corp otherwise denies the allegations in paragraph 10 of the Complaint.

11. ResMed Corp admits that U.S. Patent 8,479,741 ("the '741 Patent") is entitled "Breathing Assistance Apparatus." ResMed Corp admits that the '741 Patent issued on July 9, 2013 and that a copy of the '741 Patent is attached to the Complaint as Exhibit 2. ResMed Corp otherwise denies the allegations in paragraph 11 of the Complaint.

12. ResMed Corp admits that U.S. Patent 8,186,345 ("the '345 Patent") is entitled "Apparatus for Supplying Gases to a Patient." ResMed Corp admits that the '345 Patent issued on May 29, 2012 and that a copy of the '345 Patent is attached to the Complaint as Exhibit 3. ResMed Corp otherwise denies the allegations in paragraph 12 of the Complaint.

13. ResMed Corp admits that U.S. Patent 8,453,641 ("the '641 Patent") is entitled "Apparatus for Measuring Properties of Supplied Gases to a Patient." ResMed Corp admits that the '641 Patent issued on June 4, 2013 and that a copy of the '641 Patent is attached to the Complaint as Exhibit 4. ResMed Corp otherwise denies the allegations in paragraph 13 of the Complaint.

14. ResMed Corp admits that U.S. Patent 9,265,902 ("the '902 Patent") is entitled "Apparatus for Measuring Properties of Gases Supplied to a Patient."

ResMed Corp admits that the '902 Patent issued on February 23, 2016 and that a copy of the '902 Patent is attached to the Complaint as Exhibit 5. ResMed Corp otherwise denies the allegations in paragraph 14 of the Complaint.

15. ResMed Corp admits that U.S. Patent 8,550,072 ("the '072 Patent") is entitled "Apparatus for Delivering Humidified Gases." ResMed Corp admits that the ''807 Patent issued on October 8, 2013 and that a copy of the '072 Patent is attached to the Complaint as Exhibit 6. ResMed Corp otherwise denies the allegations in paragraph 15 of the Complaint.

16. ResMed Corp admits that U.S. Patent 8,091,547 ("the '547 Patent") is entitled "Apparatus for Delivering Humidified Gases." ResMed Corp admits that the '547 Patent issued on January 10, 2012 and that a copy of the '547 Patent is attached to the Complaint as Exhibit 7. ResMed Corp otherwise denies the allegations in paragraph 16 of the Complaint.

17. ResMed Corp admits that U.S. Patent 7,111,624 ("the '624 Patent") is entitled "Apparatus for Delivering Humidified Gases." ResMed Corp admits that the '624 Patent issued on September 26, 2006 and that a copy of the '624 Patent is attached to the Complaint as Exhibit 8. ResMed Corp otherwise denies the allegations in paragraph 17 of the Complaint.

18. ResMed Corp admits that U.S. Patent 6,398,197 ("the '197 Patent") is entitled "Water Chamber." ResMed Corp admits that the '197 Patent issued on June 4, 2002 and that a copy of the '197 Patent is attached to the Complaint as Exhibit 9. ResMed Corp otherwise denies the allegations in paragraph 18 of the Complaint.

IV. RESMED CORP'S ALLEGED ACTIVITIES

19. ResMed Corp admits that it has offered to sell and has sold products under the names AirSense™ 10 AutoSet, Airsense™ 10 AutoSet for Her, AirSense™10 CPAP, and AirSense™ 10 Elite in the United States. ResMed Corp otherwise denies the allegations in paragraph 19 of the Complaint.

20. ResMed Corp admits that it has offered to sell and has sold products under the names AirCurve™ 10 ASV, AirCurve™ 10 S, AirCurve™ 10 VAuto, and AirCurve™ 10 ST in the United States. ResMed Corp otherwise denies the allegations in paragraph 20 of the Complaint.

21. ResMed Corp admits that it has offered to sell and has sold products under the name ClimateLineAir™ in the United States. ResMed Corp otherwise denies the allegations in paragraph 21 of the Complaint.

22. ResMed Corp admits that it has offered to sell and has sold products under the names Swift™ FX and the Swift™ LT in the United States. ResMed Corp otherwise denies the allegations in paragraph 22 of the Complaint.

FIRST CLAIM FOR RELIEF

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

23. ResMed Corp incorporates by reference its responses to paragraphs 1-22 as if repeated here verbatim.

24. ResMed Corp denies the allegations in paragraph 24 of the Complaint.

25. ResMed Corp denies the allegations in paragraph 25 of the Complaint.

26. ResMed Corp denies the allegations in the first sentence of paragraph 26 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 26 as they paraphrase limitations from the '807 patent's claims and provide no explanation as to how the claim limitations are met, and because the claim limitations may require construction by the Court before an

infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 26 in their entirety.

27. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare dated February 27, 2015 that mentioned the '807 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 27 in their entirety.

28. ResMed Corp denies the allegations in paragraph 28 of the Complaint.

29. ResMed Corp denies the allegations in paragraph 29 of the Complaint.

30. ResMed Corp denies the allegations in paragraph 30 of the Complaint.

31. ResMed Corp denies the allegations in paragraph 31 of the Complaint.

32. ResMed Corp denies the allegations in paragraph 32 of the Complaint.

33. ResMed Corp denies the allegations in paragraph 33 of the Complaint.

SECOND CLAIM FOR RELIEF

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

34. ResMed Corp incorporates by reference its responses to paragraphs 1-33 as if repeated here verbatim.

35. ResMed Corp denies the allegations in paragraph 35 of the Complaint.

36. ResMed Corp denies the allegations in paragraph 36 of the Complaint.

37. ResMed Corp denies the allegations in the first sentence of paragraph 37 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 37 as they paraphrase limitations from the '741 patent's claims and provide no explanation as to how the limitations are met, and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 37 in their entirety.

38. ResMed Corp denies the allegations in paragraph 38 as they paraphrase limitations from the '741 patent's claims and provide no explanation as to how the

limitations are met, and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 38 in their entirety.

39. ResMed Corp denies the allegations in paragraph 39 as they paraphrase limitations from the '741 patent's claims and provide no explanation as to how the claim limitations are met. and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 39 in their entirety.

40. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare dated February 27, 2015 that mentioned the '741 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 40 in their entirety.

41. ResMed Corp denies the allegations in paragraph 41 of the Complaint.

42. ResMed Corp denies the allegations in paragraph 42 of the Complaint.

43. ResMed Corp denies the allegations in paragraph 43 of the Complaint.

44. ResMed Corp denies the allegations in paragraph 44 of the Complaint.

45. ResMed Corp denies the allegations in paragraph 45 of the Complaint.

46. ResMed Corp denies the allegations in paragraph 46 of the Complaint.

47. ResMed Corp denies the allegations in paragraph 47 of the Complaint

THIRD CLAIM FOR RELIEF

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

48. ResMed Corp incorporates by reference its responses to paragraphs 1-47 as if repeated here verbatim.

49. ResMed Corp denies the allegations in paragraph 49 of the Complaint.

50. ResMed Corp denies the allegations in paragraph 50 of the Complaint.

51. ResMed Corp denies the allegations in the first sentence of paragraph 51 of the Complaint. ResMed Corp denies the allegations in the remaining

sentences in paragraph 51 as they paraphrase limitations from the '345 patent's claims and provide no explanation as to how the claim limitations are met, and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 51 in their entirety.

52. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare dated February 22, 2016 that mentioned the '345 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 52 in their entirety.

53. ResMed Corp denies the allegations in paragraph 53 of the Complaint.

54. ResMed Corp denies the allegations in paragraph 54 of the Complaint.

55. ResMed Corp denies the allegations in paragraph 55 of the Complaint.

56. ResMed Corp denies the allegations in paragraph 56 of the Complaint.

57. ResMed Corp denies the allegations in paragraph 57 of the Complaint.

58. ResMed Corp denies the allegations in paragraph 58 of the Complaint.

59. ResMed Corp denies the allegations in paragraph 59 of the Complaint.

60. ResMed Corp denies the allegations in paragraph 60 of the Complaint.

FOURTH CLAIM FOR RELIEF

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

61. ResMed Corp incorporates by reference its responses to paragraphs 1-60 as if repeated here verbatim.

62. ResMed Corp denies the allegations in paragraph 62 of the Complaint.

63. ResMed Corp denies the allegations in paragraph 63 of the Complaint.

64. ResMed Corp denies the allegations in the first sentence of paragraph 64 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 64 as they paraphrase limitations from the '641 patent's claims and provide no explanation as to how the claim limitations are met, and

because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 64 in their entirety.

65. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare dated February 22, 2016 that mentioned the '641 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 65 in their entirety.

66. ResMed Corp denies the allegations in paragraph 66 of the Complaint.

67. ResMed Corp denies the allegations in paragraph 67 of the Complaint.

68. ResMed Corp denies the allegations in paragraph 68 of the Complaint.

69. ResMed Corp denies the allegations in paragraph 69 of the Complaint.

70. ResMed Corp denies the allegations in paragraph 70 of the Complaint.

71. ResMed Corp denies the allegations in paragraph 71 of the Complaint.

72. ResMed Corp denies the allegations in paragraph 72 of the Complaint.

73. ResMed Corp denies the allegations in paragraph 73 of the Complaint.

FIFTH CLAIM FOR RELIEF

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

74. ResMed Corp incorporates by reference its responses to paragraphs 1-73 as if repeated here verbatim.

75. ResMed Corp denies the allegations in paragraph 75 of the Complaint.

76. ResMed Corp denies the allegations in paragraph 76 of the Complaint.

77. ResMed Corp denies the allegations in the first sentence of paragraph 77 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 63 as they paraphrase limitations from the '902 patent's claims and provide no explanation as to how the claim limitations are met, and because the claim limitations may require construction by the Court before an

infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 77 in their entirety.

78. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare dated February 22, 2016 that mentioned the '902 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. . ResMed Corp otherwise denies the allegations in paragraph 78 in their entirety.

79. ResMed Corp denies the allegations in paragraph 79 of the Complaint.

80. ResMed Corp denies the allegations in paragraph 80 of the Complaint.

81. ResMed Corp denies the allegations in paragraph 81 of the Complaint.

82. ResMed Corp denies the allegations in paragraph 82 of the Complaint.

83. ResMed Corp denies the allegations in paragraph 83 of the Complaint.

84. ResMed Corp denies the allegations in paragraph 84 of the Complaint.

85. ResMed Corp denies the allegations in paragraph 85 of the Complaint.

86. ResMed Corp denies the allegations in paragraph 86 of the Complaint.

SIXTH CLAIM FOR RELIEF

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

87. ResMed Corp incorporates by reference its responses to paragraphs 1-86 as if repeated here verbatim.

88. ResMed Corp denies the allegations in paragraph 88 of the Complaint.

89. ResMed Corp denies the allegations in paragraph 89 of the Complaint.

90. ResMed Corp denies the allegations in the first sentence of paragraph 90 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 90 as they paraphrase limitations from the '072 patent's claims and provide no explanation as to how the claim limitations are met, and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 90 in their entirety.

91. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare on or about October 1, 2015 that mentioned the '072 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 91 in their entirety.

92. ResMed Corp denies the allegations in paragraph 92 of the Complaint.

93. ResMed Corp denies the allegations in paragraph 93 of the Complaint.

94. ResMed Corp denies the allegations in paragraph 94 of the Complaint.

95. ResMed Corp denies the allegations in paragraph 95 of the Complaint.

96. ResMed Corp denies the allegations in paragraph 96 of the Complaint.

97. ResMed Corp denies the allegations in paragraph 97 of the Complaint.

98. ResMed Corp denies the allegations in paragraph 98 of the Complaint.

99. ResMed Corp denies the allegations in paragraph 99 of the Complaint.

SEVENTH CLAIM FOR RELIEF

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

100. ResMed Corp incorporates by reference its responses to paragraphs 1-99 as if repeated here verbatim.

101. ResMed Corp denies the allegations in paragraph 101 of the Complaint.

102. ResMed Corp denies the allegations in paragraph 102 of the Complaint.

103. ResMed Corp denies the allegations in the first sentence of paragraph 103 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 103 as they paraphrase limitations from the '547 patent's claims and provide no explanation as to how the claim limitations are met, and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 103 in their entirety.

104. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare on or about October 1, 2015 that mentioned the '547 patent, after

ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 104 in their entirety.

105. ResMed Corp denies the allegations in paragraph 105 of the Complaint.

106. ResMed Corp denies the allegations in paragraph 106 of the Complaint.

107. ResMed Corp denies the allegations in paragraph 107 of the Complaint.

108. ResMed Corp denies the allegations in paragraph 108 of the Complaint.

109. ResMed Corp denies the allegations in paragraph 109 of the Complaint.

110. ResMed Corp denies the allegations in paragraph 110 of the Complaint.

111. ResMed Corp denies the allegations in paragraph 111 of the Complaint.

112. ResMed Corp denies the allegations in paragraph 112 of the Complaint.

EIGHTH CLAIM FOR RELIEF

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

113. ResMed Corp incorporates by reference its responses to paragraphs 1-112 as if repeated here verbatim.

114. ResMed Corp denies the allegations in paragraph 114 of the Complaint.

115. ResMed Corp denies the allegations in paragraph 115 of the Complaint.

116. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare on or about October 1, 2015 that mentioned the '624 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 116 in their entirety.

117. ResMed Corp denies the allegations in the first sentence of paragraph 117 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 117 as they paraphrase limitations from the '624 patent's claims and provide no explanation as to how the claim limitations are met, and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 117 in their entirety.

118. ResMed Corp denies the allegations in paragraph 118 of the Complaint.

119. ResMed Corp denies the allegations in paragraph 119 of the Complaint.

120. ResMed Corp denies the allegations in paragraph 120 of the Complaint.

121. ResMed Corp denies the allegations in paragraph 121 of the Complaint.

122. ResMed Corp denies the allegations in paragraph 122 of the Complaint.

123. ResMed Corp denies the allegations in paragraph 123 of the Complaint.

124. ResMed Corp denies the allegations in paragraph 124 of the Complaint.

125. ResMed Corp denies the allegations in paragraph 125 of the Complaint.

NINTH CLAIM FOR RELIEF

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

126. ResMed Corp incorporates by reference its responses to paragraphs 1-125 as if repeated here verbatim.

127. ResMed Corp denies the allegations in paragraph 127 of the Complaint.

128. ResMed Corp denies the allegations in paragraph 128 of the Complaint.

129. ResMed Corp denies the allegations in the first sentence of paragraph 129 of the Complaint. ResMed Corp denies the allegations in the remaining sentences in paragraph 129 as they paraphrase limitations from the '197 patent's claims and provide no explanation as to how the claim limitations are met, and because the claim limitations may require construction by the Court before an infringement analysis can be performed. ResMed Corp otherwise denies the allegations in paragraph 129 in their entirety.

130. ResMed Corp admits that it received a communication from Fisher & Paykel Healthcare on or about October 1, 2015 that mentioned the '197 patent, after ResMed informed Fisher & Paykel Healthcare it was infringing ResMed's patents. ResMed Corp otherwise denies the allegations in paragraph 130 in their entirety.

131. ResMed Corp denies the allegations in paragraph 131 of the Complaint.

132. ResMed Corp denies the allegations in paragraph 132 of the Complaint.

133. ResMed Corp denies the allegations in paragraph 133 of the Complaint.

134. ResMed Corp denies the allegations in paragraph 134 of the Complaint.

135. ResMed Corp denies the allegations in paragraph 135 of the Complaint.

136. ResMed Corp denies the allegations in paragraph 136 of the Complaint.

137. ResMed Corp denies the allegations in paragraph 137 of the Complaint.

138. ResMed Corp denies the allegations in paragraph 138 of the Complaint.

V. RESMED CORP'S AFFIRMATIVE DEFENSES

139. Without prejudice to the denials set forth in its Answer and without admitting any allegations in the Complaint not otherwise admitted, ResMed Corp asserts the following affirmative defenses. ResMed Corp reserves the right to allege additional affirmative defenses and amend its presently pled affirmative defenses as additional facts become known throughout the course of discovery:

FIRST AFFIRMATIVE DEFENSE

(Non-Infringement)

140. ResMed Corp has not directly infringed and does not currently directly infringe literally or under the doctrine of equivalents any valid claim of the '807, '741, '345, '641, '902, '072, '547, '624, or '197 patents.

SECOND AFFIRMATIVE DEFENSE

(No Induced Infringement)

141. ResMed Corp has not induced infringement of, and does not and will not induce infringement of, any valid and enforceable claim of the '807, '741, '345, '641, '902, '072, '547, '624, and '197 patents.

THIRD AFFIRMATIVE DEFENSE

(No Contributory Infringement)

142. ResMed Corp has not contributed to the infringement of, and does not and will not contribute to infringement of, any valid and enforceable claim of the '807, '741, '345, '641, '902, '072, '547, '624, and '197 patents.

FOURTH AFFIRMATIVE DEFENSE

(No Willful Infringement)

143. ResMed Corp has not willfully infringed, and does not and will not willfully infringe, any valid and enforceable claim of the '807, '741, '345, '641, '902, '072, '547, '624, and '197 patents.

FIFTH AFFIRMATIVE DEFENSE

(Invalidity)

144. The claims of the '807, '741, '345, '641, '902, '072, '547, '624, and '197 patents are invalid because they fail to satisfy the requirements of patentability provided in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and 112 and other judicially created bases for invalidation.

SIXTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

145. The Complaint fails to state a valid claim that this is an exceptional case or that FPH is entitled to enhanced damages. This is not an exceptional case and FPH is not entited to enhanced damages.

SEVENTH AFFIRMATIVE DEFENSE

(No Right to Injunctive Relief)

146. FPH is not entitled to injunctive relief, including because it has not suffered any irreparable injury and an adequate remedy at law is available for any purported injury.

V. RESMED CORP'S PRAYER FOR RELIEF

WHEREFORE, ResMed Corp denies that FPH is entitled to any of the relief requested or to any relief whatsoever.

ResMed Corp respectfully requests the Court:

a. dismiss FPH's action with prejudice;

b. enter judgment in favor of ResMed Corp;

c. deny FPH any of the relief it has requested or any other relief whatsoever;

d. award ResMed Corp its reasonable attorneys' fees and costs incurred in defending this action pursuant to 35 U.S.C. § 285; and

e. award ResMed Corp such further relief as the Court deems just and appropriate.

COUNTERCLAIMS

Plaintiffs ResMed Inc., ResMed Corp, and ResMed Ltd (individually and collectively, "ResMed") hereby complain of Counterclaim-defendants Fisher & Paykel Healthcare Corporation Limited, Fisher & Paykel Healthcare Limited, Fisher & Paykel Healthcare Inc., and Fisher & Paykel Healthcare Distribution Inc. (individually and collectively, "F&P") and alleges as follows:

I. THE PARTIES

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

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

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

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

5. On information and belief, Defendant Fisher & Paykel Healthcare Corporation Limited ("F&P Healthcare Corp. Ltd") is a New Zealand corporation having a principal place of business at 15 Maurice Paykel Place, East Tamaki, Auckland 2013, New Zealand, PO Box 14 348, Panmure, Auckland, New Zealand.

6. On information and belief, F&P Healthcare Corp. Ltd is the parent company of the counterclaim-defendant Fisher & Paykel Healthcare entities.

7. On information and belief, Counterclaim Defendant Fisher & Paykel Healthcare Limited ("F&P Healthcare Ltd") is a New Zealand corporation having a

principal place of business at 15 Maurice Paykel Place, East Tamaki, Auckland 2013, New Zealand, PO Box 14 348, Panmure, Auckland, New Zealand.

8. On information and belief, F&P Healthcare Ltd is a subsidiary of F&P Healthcare Corp. Ltd.

9. On information and belief, Counterclaim Defendant Fisher & Paykel Healthcare Inc. ("F&P Healthcare Inc.") is a corporation organized and existing under the laws of the state of California having a principal place of business at 15365 Barranca Parkway, Irvine, CA 92618.

10. On information and belief, F&P Healthcare Inc. is a U.S. sales entity.

11. On information and belief, Counterclaim Fisher & Paykel Healthcare Distribution Inc. ("F&P Healthcare Dist.") is a corporation organized and existing under the laws of the state of California having a principal place of business at 15365 Barranca Parkway, Irvine, CA 92618.

12. On information and belief, F&P Healthcare Dist. is a U.S. distribution entity.

II. JURISDICTION AND VENUE

13. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 100, et seq., including, 35 U.S.C. §§ 271 and 281.

14. This Court has subject matter jurisdiction over RedMed's claims under 28 U.S.C. §§ 1331 and 1338(a), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

15. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and 1400(b) because, among other reasons, FPH has sued ResMed Corp. in this judicial district.

16. F&P is subject to personal jurisdiction in California and in this judicial district because F&P has committed the acts of infringement complained of by

ResMed in this judicial district and because the F&P subsidiaries are all residents of California.

III. RESMED'S COUNTERCLAIMS OF INVALIDITY AND NONINFRINGEMENT

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '807 Patent)

17. ResMed incorporates by reference Paragraphs 1-16 as if repeated here verbatim.

18. United States Patent No. 8,443,807 patent is entitled "Breathing Assistance Apparatus," (hereinafter "the '807 patent").

19. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '807 patent.

20. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '807 patent.

21. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '807 patent, either literally or under the doctrine of equivalents.

22. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '807 patent, either literally or under the doctrine of equivalents.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '807 Patent)

23. ResMed incorporates by reference Paragraphs 1-22 as if repeated here verbatim.

24. United States Patent No. 8,443,807 patent is entitled "Breathing Assistance Apparatus."

25. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '807 patent.

26. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '807 patent.

27. The claims of the '807 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

28. ResMed is entitled to a judicial declaration that the claims of the '807 patent are invalid.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '741 Patent)

29. ResMed incorporates by reference Paragraphs 1-28 as if repeated here verbatim.

30. United States Patent No. 8,479,741 patent is entitled "Breathing Assistance Apparatus," (hereinafter "the '741 patent").

31. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '741 patent.

32. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '741 patent.

33. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '741 patent, either literally or under the doctrine of equivalents.

34. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '741 patent, either literally or under the doctrine of equivalents.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '741 Patent)

35. ResMed incorporates by reference Paragraphs 1-34 as if repeated here verbatim.

36. United States Patent No. 8,479,741 patent is entitled "Breathing Assistance Apparatus."

37. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '741 patent.

38. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '741 patent.

39. The claims of the '741 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

40. ResMed is entitled to a judicial declaration that the claims of the '741 patent are invalid.

FIFTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '345 Patent)

41. ResMed incorporates by reference Paragraphs 1-40 as if repeated here verbatim.

42. United States Patent No. 8,186,345 patent is entitled "Apparatus for Supplying Gases to a Patient," (hereinafter "the '345 patent").

43. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '345 patent.

44. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '345 patent.

45. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '345 patent, either literally or under the doctrine of equivalents.

46. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '345 patent, either literally or under the doctrine of equivalents.

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '345 Patent)

47. ResMed incorporates by reference Paragraphs 1-46 as if repeated here verbatim.

48. United States Patent No. 8,186,345 patent is entitled "Apparatus for Supplying Gases to a Patient."

49. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '345 patent.

50. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '345 patent.

51. The claims of the '345 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

52. ResMed is entitled to a judicial declaration that the claims of the '345 patent are invalid.

SEVENTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '641 Patent)

53. ResMed incorporates by reference Paragraphs 1-52 as if repeated here verbatim.

54. United States Patent No. 8,453,641 patent is entitled "Apparatus For Measuring Properties of Gases Supplied to a Patient," (hereinafter "the '641 patent").

55. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '641 patent.

56. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '641 patent.

57. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '641 patent, either literally or under the doctrine of equivalents.

58. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '641 patent, either literally or under the doctrine of equivalents.

EIGHTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '641 Patent)

59. ResMed incorporates by reference Paragraphs 1-58 as if repeated here verbatim.

60. United States Patent No. 8,453,641 patent is entitled "Apparatus For Measuring Properties of Gases Supplied to a Patient."

61. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '641 patent.

62. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '641 patent.

63. The claims of the '641 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

64. ResMed is entitled to a judicial declaration that the claims of the '641 patent are invalid.

NINTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '902 Patent)

65. ResMed incorporates by reference Paragraphs 1-64 as if repeated here verbatim.

66. United States Patent No. 9,265,902 patent is entitled "Apparatus For Measuring Properties of Gases Supplied to a Patient," (hereinafter "the '902 patent").

67. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '902 patent.

68. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '902 patent.

69. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '902 patent, either literally or under the doctrine of equivalents.

70. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '902 patent, either literally or under the doctrine of equivalents.

TENTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '902 Patent)

71. ResMed incorporates by reference Paragraphs 1-70 as if repeated here verbatim.

72. United States Patent No. 9,265,902 patent is entitled "Apparatus For Measuring Properties of Gases Supplied to a Patient."

73. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '902 patent.

74. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '902 patent.

75. The claims of the '902 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

76. ResMed is entitled to a judicial declaration that the claims of the '902 patent are invalid.

ELEVENTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '072 Patent)

77. ResMed incorporates by reference Paragraphs 1-76 as if repeated here verbatim.

78. United States Patent No. 8,550,072 patent is entitled "Apparatus for Delivering Humidified Gases," (hereinafter "the '072 patent").

79. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '072 patent.

80. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '072 patent.

81. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '072 patent, either literally or under the doctrine of equivalents.

82. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '072 patent, either literally or under the doctrine of equivalents.

TWELFTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '072 Patent)

83. ResMed incorporates by reference Paragraphs 1-82 as if repeated here verbatim.

84. United States Patent No. 8,550,072 patent is entitled "Apparatus for Delivering Humidified Gases."

85. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '072 patent.

86. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '072 patent.

87. The claims of the '072 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

88. ResMed is entitled to a judicial declaration that the claims of the '072 patent are invalid.

THIRTEENTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '547 Patent)

89. ResMed incorporates by reference Paragraphs 1-88 as if repeated here verbatim.

90. United States Patent No. 8,091,547 patent is entitled "Apparatus for Delivering Humidified Gases," (hereinafter "the '547 patent").

91. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '547 patent.

92. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '547 patent.

93. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '547 patent, either literally or under the doctrine of equivalents.

94. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '547 patent, either literally or under the doctrine of equivalents.

FOURTEENTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '547 Patent)

95. ResMed incorporates by reference Paragraphs 1-94 as if repeated here verbatim.

96. United States Patent No. 8,091,547 patent is entitled "Apparatus for Delivering Humidified Gases."

97. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '547 patent.

98. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '547 patent.

99. The claims of the '547 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

100. ResMed is entitled to a judicial declaration that the claims of the '547 patent are invalid.

FIFTEENTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '624 Patent)

101. ResMed incorporates by reference Paragraphs 1-100 as if repeated here verbatim.

102. United States Patent No. 7,111,624 patent is entitled "Apparatus for Delivering Humidified Gases," (hereinafter "the '624 patent").

103. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '624 patent.

104. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '624 patent.

105. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '624 patent, either literally or under the doctrine of equivalents.

106. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '624 patent, either literally or under the doctrine of equivalents.

SIXTEENTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '624 Patent)

107. ResMed incorporates by reference Paragraphs 1-106 as if repeated here verbatim.

108. United States Patent No. 7,111,624 patent is entitled "Apparatus for Delivering Humidified Gases."

109. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '624 patent.

110. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '624 patent.

111. The claims of the '624 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

112. ResMed is entitled to a judicial declaration that the claims of the '624 patent are invalid.

SEVENTEENTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the '197 Patent)

113. ResMed incorporates by reference Paragraphs 1-112 as if repeated here verbatim.

114. United States Patent No. 6,398,197 patent is entitled "Water Chamber," (hereinafter "the '197 patent").

115. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the non-infringement of the claims of the '197 patent.

116. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '197 patent.

117. ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '197 patent, either literally or under the doctrine of equivalents.

118. ResMed is entitled to a declaration that it has not infringed, does not infringe, and will not infringe, either directly or indirectly through contributory or induced infringement, any claim of the '197 patent, either literally or under the doctrine of equivalents.

EIGHTEENTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '197 Patent)

119. ResMed incorporates by reference Paragraphs 1-118 as if repeated here verbatim.

120. United States Patent No. 6,398,197 patent is entitled "Water Chamber."

121. There is an actual, substantial, and continuing case or controversy between ResMed and F&P regarding the invalidity of the claims of the '197 patent.

122. F&P has alleged that ResMed has directly infringed, contributed to infringement of, and induced infringement of the '197 patent.

123. The claims of the '197 patent are invalid for failure to satisfy one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and 112, as well as other judicially created bases for invalidation.

124. ResMed is entitled to a judicial declaration that the claims of the '197 patent are invalid.

IV. RESMED'S COUNTERCLAIMS OF INFRINGEMENT

RESMED PATENTS IN SUIT

125. ResMed Ltd is the owner by assignment of all right, title, and interest in and to United States Patent No. 8,944,061 patent entitled "Cushion To Frame Assembly Mechanism," (hereinafter "the '061 patent"), which was duly and legally issued on February 3, 2015.

126. The '061 patent is valid, enforceable, and currently in full force and effect. A copy of the '061 patent is attached as Exhibit A.

127. ResMed Inc. is the exclusive licensee of the '061 patent and has exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

128. ResMed Ltd is the owner by assignment of all right, title, and interest in and to United States Patent No. 8,950,404 entitled "Headgear For Masks," (hereinafter "the '404 patent"), which was duly and legally issued on February 10, 2015.

129. The '404 patent is valid, enforceable, and currently in full force and effect. A copy of the '404 patent is attached as Exhibit B.

130. ResMed Inc. is the exclusive licensee of the '404 patent and has exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

131. ResMed Ltd is the owner by assignment of all right, title, and interest in and to United States Patent No. 8,960,196 entitled "Mask System with

Interchangeable Headgear Connectors," (hereinafter "the '196 patent"), which was duly and legally issued on February 24, 2015.

132. The '196 patent is valid, enforceable, and currently in full force and effect. A copy of the '196 patent is attached as Exhibit C.

133. ResMed Inc. is the exclusive licensee of the '196 patent and has exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

134. ResMed Ltd is the owner by assignment of all right, title, and interest in and to United States Patent No. 9,027,556 entitled "Mask System," (hereinafter "the '556 patent"), which was duly and legally issued on May 12, 2015.

135. The '556 patent is valid, enforceable, and currently in full force and effect. A copy of the '556 patent is attached as Exhibit D.

136. ResMed Inc. is the exclusive licensee of the '556 patent and has exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

137. ResMed Ltd is the owner by assignment of all right, title, and interest in and to United States Patent No. 9,119,931 entitled "Mask System," (hereinafter "the '931 patent"), which was duly and legally issued on September 1, 2015.

138. The '931 patent is valid, enforceable, and currently in full force and effect. A copy of the '931 patent is attached as Exhibit E.

139. ResMed Inc. is the exclusive licensee of the '931 patent and has exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

140. ResMed R&D Germany GmbH. is the owner by assignment of all right, title, and interest in and to United States Patent No. 9,242,062 entitled "Breathing Mask and a Sealing Lip Device for a Breathing Mask," (hereinafter "the '062 patent"), which was duly and legally issued on January 26, 2016.

141. The '062 patent is valid, enforceable, and currently in full force and effect. A copy of the '062 patent is attached as Exhibit F.

142. ResMed Ltd is the exclusive licensee of the '062 patent and has exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

143. ResMed Ltd is the owner by assignment of all right, title, and interest in and to United States Patent No. 9,381,316 entitled "Interchangeable Mask Assembly," (hereinafter "the '316 patent"), which was duly and legally issued on July 5, 2016.

144. The '316 patent is valid, enforceable, and currently in full force and effect. A copy of the '316 patent is attached as Exhibit G.

145. ResMed Inc. is the exclusive licensee of the '316 patent and has exclusively sublicensed the patent to ResMed Corp, the U.S. sales subsidiary.

146. As used herein, the term "Patents-in-Suit" means individually and/or collectively the '061 patent, the '404 patent, '196 patent, the '556 patent, '931 patent, '062 patent and the '316 patent.

RESMED

147. ResMed is a leading developer, manufacturer and distributor of medical equipment for treating, diagnosing, and managing sleep-disordered breathing and other respiratory disorders.

148. 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").

149. Since it was founded in 1989, ResMed has focused on developing and commercializing systems for the treatment of obstructive sleep apnea ("OSA"), a major subset of SDB.

150. ResMed's development of innovative therapies for the treatment of OSA has resulted in over 4,000 patents granted or pending worldwide, and its product line incorporates technology that is a highly effective and proven way to treat OSA.

151. ResMed has invested hundreds of millions of dollars in research and development.

152. It has been estimated that SDB in general, and OSA in particular, affects approximately 20% of the adult population, making it as widespread as diabetes or asthma.

153. However, awareness of OSA is relatively low; one study in 2002 concluded that about 90% of people with OSA remain undiagnosed and untreated.

154. Therefore, ResMed has made substantial investments directed to increasing education and awareness of the health consequences of untreated SDB among both the general public and physicians.

155. 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 masks, including the Quattro Air, Quattro Air for Her, Quattro FX, Quattro FX for Her, AirFit N10, AirFit N10 for Her, AirFit F10, AirFit F10 for Her, Mirage FX, and Mirage FX for Her.

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

F&P'S INFRINGING ACTIVITIES AND PRODUCTS

157. On information and belief, F&P, on its own and/or through its subsidiaries, is in the business of manufacturing, packaging, importing, selling, offering to sell, and/or distributing a variety of sleep-disordered breathing treatment systems and components thereof, including, but not limited to, F&P's Eson product line, F&P's Eson 2 product line, and F&P's Simplus product line (collectively, "Accused Products"). The Accused Products are one component of a continuous positive airway pressure ("CPAP") therapy system.

158. F&P has placed the Accused Eson and Simplus 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. F&P has announced plans and has taken steps to do the same with its Eson 2 product and has imported examples of the Eson 2 Accused Product into the United States and has displayed the Eson 2 for promotional purposes.

159. F&P is a manufacturer and distributor of durable medical equipment, including systems and components thereof for the treatment of sleep-disordered breathing, such as obstructive sleep apnea.

160. F&P's distribution network distributes sleep-disordered breathing treatment systems and products directly to customers located throughout the United States, including in this judicial district.

161. F&P develops, manufactures, and markets sleep-disordered breathing treatment systems and components thereof that infringe one or more claims of the Patents-in-Suit, as defined below.

162. F&P's accused sleep-disordered breathing treatment systems and components thereof are manufactured, assembled, packaged, and/or tested outside of the United States. F&P then imports the accused sleep-disordered breathing treatment systems and components thereof into the United States, sells them for importation, or sells them in the United States after importation.

163. By importing into the United States, shipping into, selling, offering to sell, and/or using products that infringe the patents-in-suit in this judicial district, or by inducing or causing those acts to occur, F&P has transacted and continues to transact business and perform work and services in this judicial district, has supplied and continues to supply services and things in this judicial district, has caused and continues to cause injury and damages in this judicial district by acts and omissions in this judicial district, and has caused and continues to cause injury and damages in this judicial district by acts or omissions outside of this judicial district while

deriving substantial revenue from services or things used or consumed within this judicial district, and will continue to do so unless enjoined by this Court.

164. On information and belief, F&P offers for sale, sells, licenses, and/or distributes the Accused Products in the United States, including within this district, and/or imports the Accused Products into the United States.

165. F&P markets the structure, operation, and use of the Simplus System to the public.

166. By way of example, on its website, F&P markets the use of the Simplus System for Sleep Apnea:

167. By way of example, on its website, F&P markets that the Simplus System includes three components, the RollFit Seal, the ErgoForm Headgear, and Easy Frame:

168. By way of example, on its website, F&P markets the structure of the Simplus System including the RollFit Seal, the ErgoForm Headgear, and Easy Frame.

169. By way of example, on its website, F&P markets that the Simplus System includes a RollFit Seal:

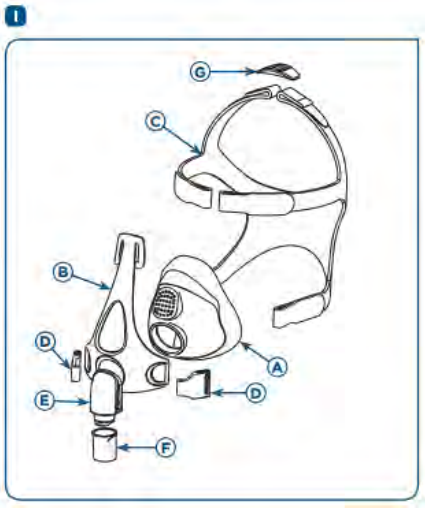
170. Below is a close up photo of the Simplus System RollFit Seal composed of two portions, a first portion of one material and a second portion of a second material that is more flexible than the first portion:

171. By way of example, on its website, F&P markets that the Simplus System includes a ErgoForm Headgear:

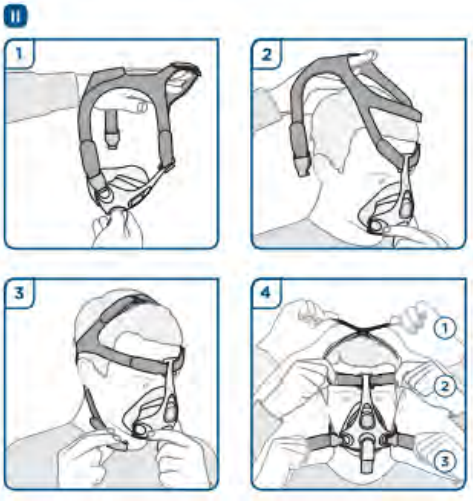
172. By way of example, on its website, F&P markets that the Simplus System includes an Easy Frame:

173. Below is a close up photo showing the Easy Frame, including an upper support member, two lower headgear clip attachments, an annular connection adapted to engage an elbow of an inlet conduit, and an opening located between the annular connection and the upper support member.

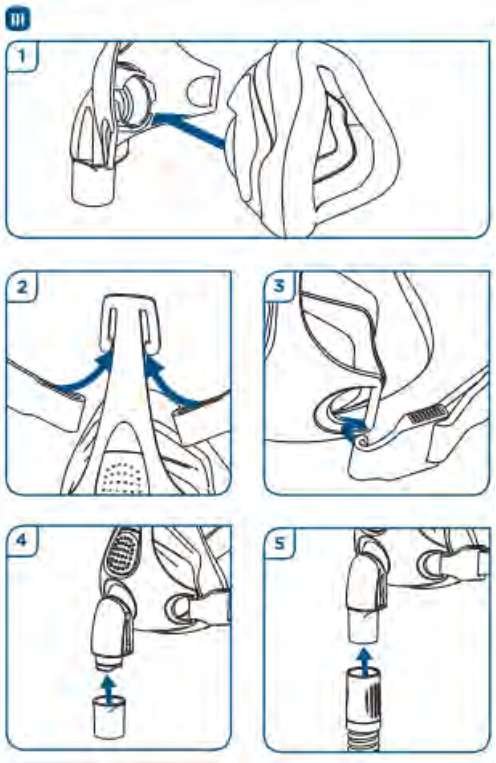
174. By way of example, on its website, F&P markets the Mask Parts of the Simplus System:



175. By way of example, on its website, F&P markets Fitting Your Mask for the Simplus System:

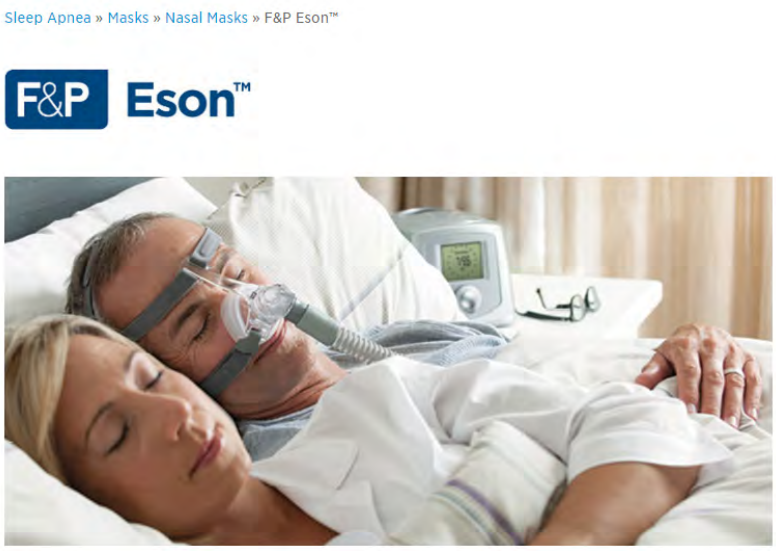


176. By way of example, on its website, F&P markets Mask Assembly/Disassembly for the Simplus System:



177. F&P markets the structure, operation, and use of the Eson System to the public. By way of example, F&P provides instruction to the public on the structure, function, use, and purchasing on its website, including at least marketing materials, sales materials, purchasing information, videos, catalogues, specification sheets, user instructions, and guides. Further, by way of example, F&P provides instruction to the public on the structure, function, and use of the Eson System product in the product packaging; including at least user instructions.

178. By way of example, on its website, F&P markets the use of the Eson System as a Nasal Mask for Sleep Apnea:



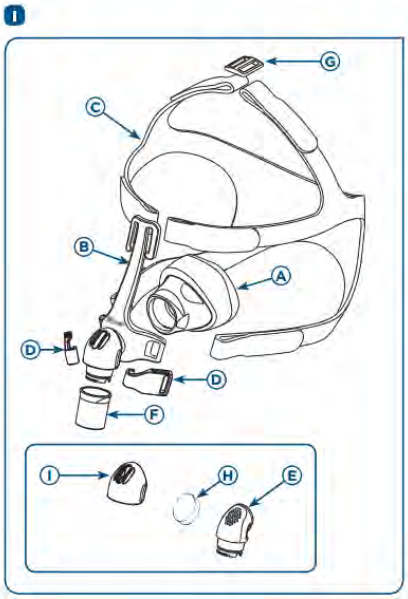
179. By way of example, on its website, F&P markets that the Eson System includes three components, the RollFit Seal, the ErgoFit Headgear, and Easy Frame:

180. By way of example, on its website, F&P markets that the Eson System includes a RollFit Seal:

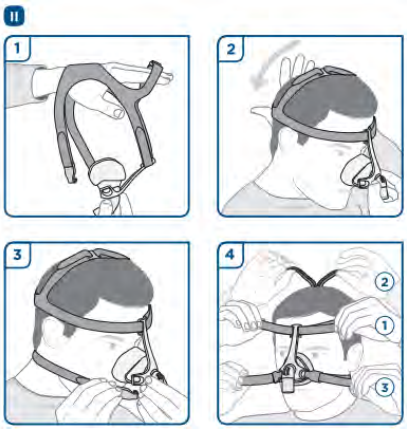
181. By way of example, on its website, F&P markets that the Eson System includes a ErgoFit Headgear:

182. By way of example, on its website, F&P markets that the Eson System includes an Easy Frame:

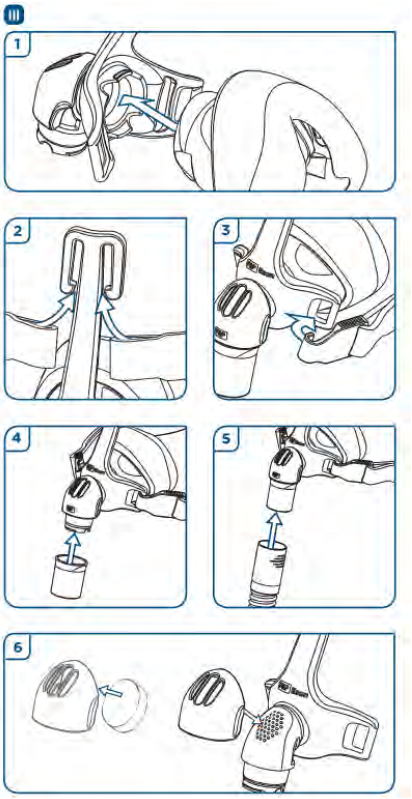
183. By way of example, on its website, F&P markets the Mask Parts of the Eson System:



184. By way of example, on its website, F&P markets Fitting Your Mask for the Eson System:



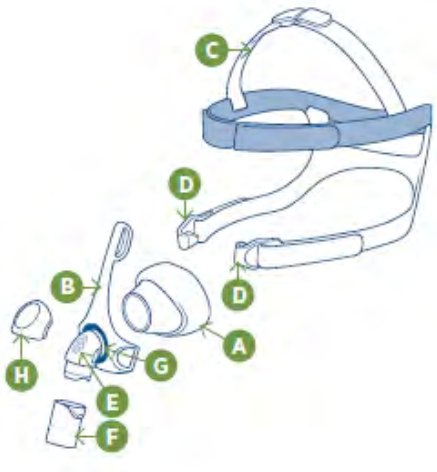
185. By way of example, on its website, F&P markets Mask Assembly/Disassembly for the Eson System:



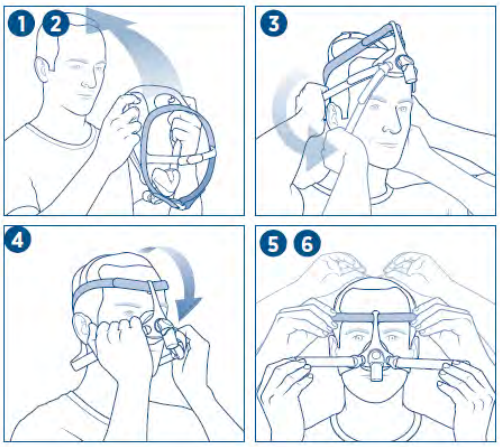
186. On information and belief, F&P has imported the Eson 2 System as a Nasal Mask for Sleep Apnea.

187. By way of example, on its website, and in its promotional materials, including the materials accompanying the imported Eson 2 System, F&P markets that the Eson 2 System includes "Key features and benefits" including, the Intuitive Headgear, the RollFit Seal and the Easy Frame:

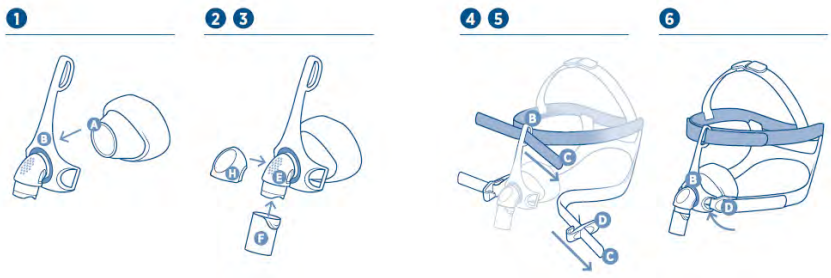
188. By way of example, in the materials accompanying the imported Eson 2 System F&P markets the Mask Parts of the Eson 2 System:



189. By way of example, in the materials accompanying the imported Eson 2 System F&P markets Fitting Your Mask for the Eson 2 System:



190. By way of example, in the materials accompanying the imported Eson 2 System F&P markets Mask Assembly/Disassembly for the Eson 2 System:



191. On information and belief, because F&P was aware of ResMed's products, F&P was also aware of ResMed patents as a result of patent marking, including the marking on ResMed's website. Moreover, F&P was aware of at least the '404 patent, '196 and '061 patents—and its infringement of the claims thereof—no later than on or about February 12, 2015, through written communications from ResMed to F&P and no later than on or on about March 4, 2015, through a meeting

and presentation from ResMed to F&P notifying F&P of its infringement. F&P was also aware of at least the '556 patent—and infringement of the claims thereof—no later than August and September 2015, through written communications and a meeting and presentation from ResMed to F&P notifying F&P of its infringement.

192. On information and belief, F&P's acts of infringement of the patents identified below have occurred with knowledge of ResMed's rights in its patents or with willful blindness thereto.

NINETEENTH CLAIM FOR RELIEF

F&P'S INFRINGEMENT OF U.S. PATENT NO. 8,944,061

193. The allegations of Paragraphs 1-192 are incorporated herein by reference.

194. F&P has directly infringed the claims of the '061 patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, the Accused Products, including but not limited to F&P's Simplus System product line.

195. By way of example, the Accused Products, including at least the Simplus Mask System, specifically infringe at least claims 17, 18, 20, 21, 22, 23, 26, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 41, 42, 43, 44, 45, 46, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, and 91 of the '061 patent.

196. By way of example, the Accused Products specifically infringe at least independent claim 17 in the following way.

197. The Accused Products include a mask assembly for treatment of sleep disorder breathing by delivering a flow of pressurized gas to a patient.

198. By way of example, F&P markets the F&P Simplus System for the treatment of sleep apnea involving the delivery of a flow of pressurized gas to the wearer of the mask.

199. The Accused Products include a first frame made of first material.

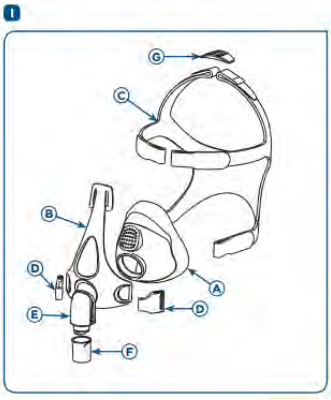
200. By way of example, the F&P Simplus System includes a frame made of a first material.

201. The Accused Products include a cushion connected to the first frame, the cushion being adapted to form a seal around a patient's nose and mouth and being made from a second material that is more flexible than the first material.

202. By way of example, the F&P Simplus System cushion-frame assembly includes a first portion of one material and a second portion made of a second material forming a seal around a patient's nose and mouth and being made from a second material that is more flexible than the first material:

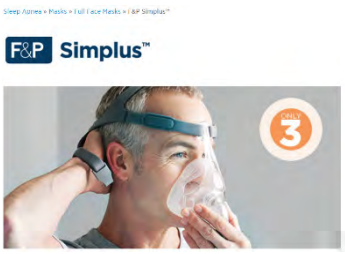
203. The Accused Products include a second frame adapted to constrain the first frame, the second frame comprising an upper support member that supports a forehead support, two lower headgear clip attachments engaged with clips provided to straps of a headgear assembly, an annular connection adapted to engage an elbow of an inlet conduit and an opening located between the annular connection and the upper support member, the opening providing access to the first frame.

204. By way of example, the Easy Frame of the Simplus System is adapted to constrain the cushion-frame assembly.

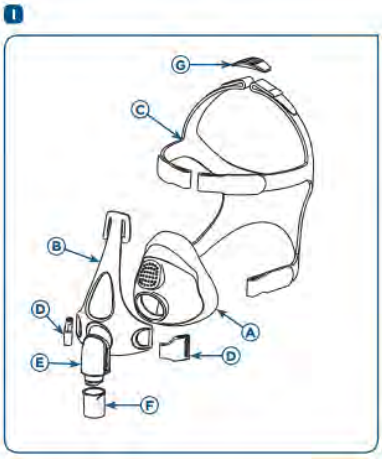


205. By way of example, the Easy Frame of the Simplus System includes an upper support member that supports a forehead support.

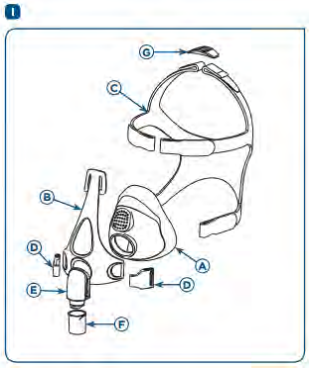
206. By way of example, the Easy Frame of the Simplus System includes two lower headgear clip attachments engaged with clips provided to straps of a headgear assembly.



207. By way of example, the Easy Frame of the Simplus System includes an annular connection that adapted to engage an elbow—a ball and socket elbow—of an inlet conduit.



208. By way of example, the Easy Frame of the Simplus System includes and an opening located between the annular connection and the upper support member, the opening providing access to the first frame.



209. 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.

210. ResMed also gives notice to the public that its products are patented by appropriately marking those products with its applicable patent numbers as permitted by 35 U.S.C. §287(a).

211. Therefore, on information and belief, F&P either must have known about the '061 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 '061 patent at least as early as the service date of this complaint.

212. ResMed directly made F&P aware of the '061 patent at least in part through written communications on or about February 12, 2015 and a meeting between ResMed and F&P on or about March 4, 2015 notifying F&P of its infringement of this patent.

213. F&P also actively induces infringement of the '061 patent in violation of 35 U.S.C. § 271(b). F&P encourages and intends the use, importation, and sale of the Accused Products within the United States. For example, at least on its website, F&P advertises the Accused Products for use within the United States and instructs patients and health care providers on the use of the Accused Products.

214. F&P also contributes to the infringement of the '061 patent in violation of 35 U.S.C. § 271(c). F&P sells within the United States, and/or imports into the United States, components of the Accused Products that are material parts of the invention of the asserted claims of the '061patent, are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by F&P to be especially made or especially adapted for use in an infringement of the '061 patent.

215. On information and belief, F&P lacks reasonable defenses for their infringing activities and therefore knows the use, importation, and sale of the Accused Products within the United States infringes the '061 patent.

216. On information and belief, F&P's infringement of the '061 patent has been, and continues to be, willful and deliberate by continuing its acts of

infringement after becoming aware of the '061 patent and its infringement of that patent. F&P's conduct has been in reckless disregard of ResMed's patent rights.

217. As a result of F&P's infringement of the '061 patent, ResMed has suffered and will continue to suffer damage.

218. ResMed is entitled to recover from F&P the damages adequate to compensate for such infringement, which have yet to be determined.

219. F&P's acts of infringement have caused and will continue to cause irreparable harm to ResMed for which there is no adequate remedy at law unless and until enjoined by this Court.

TWENTIETH CLAIM FOR RELIEF

F&P'S INFRINGEMENT OF U.S. PATENT NO. 8,950,404

220. The allegations of Paragraphs 1-219 are incorporated herein by reference.

221. F&P has directly infringed the claims of the '404 patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, the Accused Products, including but not limited to F&P's Simplus System product line.

222. By way of example, the Accused Products, including at least the Simplus Mask System, specifically infringe at least claims 1, 5, 6, 7, 8, 9, 15, 16, 17, 27, and 28 of the '404 patent. By way of example, the Accused Products, including at least the Eson 2 Mask System, specifically infringe at least claims 1, 5, 6, 7, 15, 16, 17, 27, and 28 of the '404 patent.

223. By way of example, the Accused Products specifically infringe at least claim 1 of the '404 patent in the following way.

224. The Accused Products include a headgear system for holding a respiratory mask in a position on a face of a patient to enhance a mask seal with the

patient's face, the headgear system including a plurality of straps providing a four-point arrangement for attachment with the respiratory mask.

225. By way of example, the Simplus System includes an ErgoForm Headgear for holding a respiratory mask, the Simplus System RollFit Seal and Easy Frame, in a position on a face of a patient to enhance a mask seal with the patient's face, the ErgoForm Headgear including a plurality of straps providing a four-point arrangement for attachment with the Easy Frame.

226. The Accused Products include at least one upper strap configured to extend above the patient's ears in use.

227. By way of example, the Simplus System ErgoForm Headgear includes at least one upper strap configured to extend above the patient's ears in use.

228. The Accused Products include at least one lower strap configured to extend below the patient's ears in use.

229. By way of example, the Simplus System ErgoForm Headgear includes at least lower strap configured to extend below the patient's ears in use.

230. The Accused Products include a rear portion.

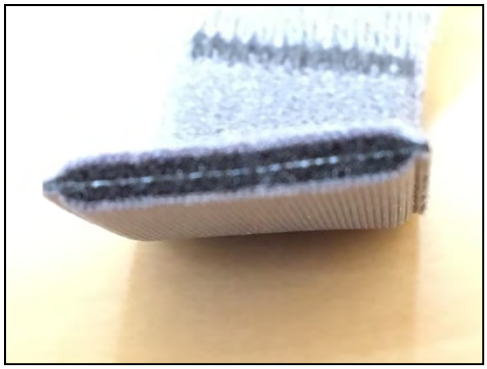
231. By way of example, the Simplus System ErgoForm Headgear includes a rear portion that contact the rear of the patient's head.

232. The Accused Products include a headgear system wherein at least one strap of said plurality of straps is constructed from a laminate having at least a first fabric layer and a second fabric layer, said first fabric layer being constructed and arranged to be located on a patient-contacting side in use, and said second fabric layer being constructed and arranged to be located on a non patient-contacting side in use and further wherein said first fabric layer and said second fabric layer are joined at a joint configured to be positioned away from the patient's face when in

use and wherein said at least one strap of said plurality of straps has a first rounded lateral edge when viewed in cross-section.

233. By way of example, the Simplus System ErgoForm Headgear includes a headgear system wherein at least one strap of said plurality of straps is constructed from a laminate having at least a first fabric layer and a second fabric layer, said first fabric layer being constructed and arranged to be located on a patient-contacting side in use, and said second fabric layer being constructed and arranged to be located on a non patient-contacting side in use and further wherein said first fabric layer and said second fabric layer are joined at a joint configured to be positioned away from the patient's face when in use and wherein said at least one strap of said plurality of straps has a first rounded lateral edge when viewed in cross-section.

234. By way of example, below is a cross sectional view of the lower strap of Simplus System ErgoForm Headgear, which includes a laminate with a rounded edge having at least a first fabric layer and a second fabric layer joined at a joint configured to be positioned away from the patient’s face.



235. The Accused Products include a headgear system wherein the joint is positioned at approximately a center or middle of the first rounded lateral edge when viewed in cross section.

236. By way of example, below is a cross sectional view of the lower strap of Simplus System ErgoForm Headgear, which includes a joint positioned at approximately a center or middle of the first rounded lateral edge when viewed in cross section.

237. 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 gives notice to the public that its products are patented by appropriately marking those products with its applicable patent numbers as permitted by 35 U.S.C. §287(a). Therefore, on information and belief, F&P either must have known about the '404 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 '404 patent at least as early as the service date of this complaint.

238. F&P was aware of the '404 patent, at least in part through written communications from ResMed on or about February 12, 2015 and a meeting between ResMed and F&P on or about March 4, 2015 notifying F&P of its infringement of this patent.

239. F&P also actively induces infringement of the '404 patent in violation of 35 U.S.C. § 271(b). F&P encourages and intends the use, importation, and sale of the Accused Products within the United States. For example, at least on its website, F&P advertises the Accused Products for use within the United States and instructs patients and health care providers on the use of the Accused Products.

240. F&P also contributes to the infringement of the '404 patent in violation of 35 U.S.C. § 271(c). F&P sells within the United States, and/or imports into the United States, components of the Accused Products that are material parts of the invention of the asserted claims of the '404 patent, are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by F&P to be especially made or especially adapted for use in an infringement of the '404 patent.

241. On information and belief, F&P lacks reasonable defenses for their infringing activities and therefore knows the use, importation, and sale of the Accused Products within the United States infringes the '404 patent.

242. On information and belief, F&P's infringement of the '404 patent has been, and continues to be, willful and deliberate by continuing its acts of infringement after becoming aware of the '404 patent and its infringement of that patent. F&P's conduct has been in reckless disregard of ResMed's patent rights.

243. As a result of F&P's infringement of the '404 patent, ResMed has suffered and will continue to suffer damage.

244. ResMed is entitled to recover from F&P the damages adequate to compensate for such infringement, which have yet to be determined.

245. F&P's acts of infringement have caused and will continue to cause irreparable harm to ResMed for which there is no adequate remedy at law unless and until enjoined by this Court.

TWENTY-FIRST CLAIM FOR RELIEF

F&P'S INFRINGEMENT OF U.S. PATENT NO. 8,960,196

246. The allegations of Paragraphs 1-245 are incorporated herein by reference.

247. F&P has directly infringed the claims of the '196 patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling

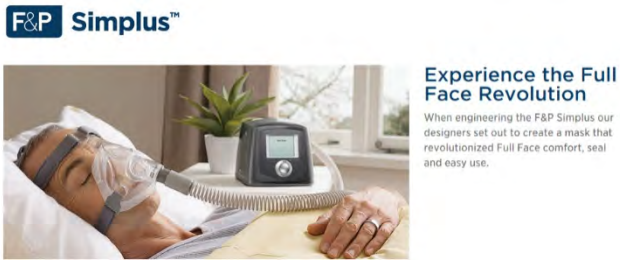
within the United States, and/or importing into the United States, the Accused Products, including but not limited to F&P's Simplus product line and Eson product line.

248. By way of example, the Accused Products, including at least the Simplus System, specifically infringe at least claims 23-86 of the '196 patent. By way of example, the Accused Products, including at least the Eson System, specifically infringe at least claims 23, 27-30, 32-36, 38-40, 41, 42-46, 48-52, 54-57, 59-62, 64-69, 71-73, 75-78, 80-82, and 84-86. By way of example, the Accused Products, including at least the Eson 2 System, specifically infringe at least claims 23, 27-30, 33-36, 38-40, 41, 42-46, 49-52, 54-57, 59-62, 65-69, 71-73, 75-78, 80-82, and 84-86.

249. By way of example, the Accused Products specifically infringe at least claim 1 of the '196 patent in the following way.

250. The Accused Products are masks for delivering breathable gas to a patient at positive pressure to treat sleep disordered breathing.

251. By way of example, the Simplus System is a mask for delivering breathable gas to a patient at positive pressure to treat sleep disordered breathing.

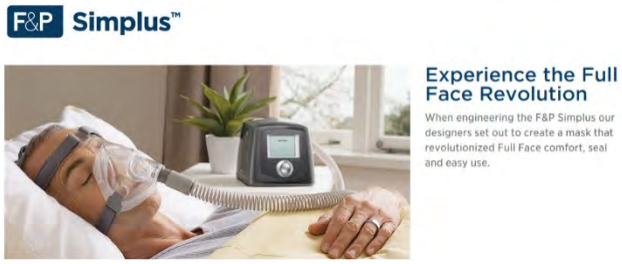


252. The Accused Products include a rigid mask frame having a bore and an interfacing structure associated with the bore, said mask frame having no built-in or integral headgear attachment points.

253. By way of example, the RollFit Seal of the Simplus System includes a rigid mask frame having a bore and an interfacing structure associated with the bore, said mask frame having no built-in or integral headgear attachment points.

254. The Accused Products include a sealing cushion provided to the mask frame and adapted to form a seal with the patient's face, the mask frame and the sealing cushion together forming a breathing cavity.

255. By way of example, the RollFit Seal of the Simplus System includes a sealing cushion provided to the mask frame and adapted to form a seal with the patient's face, the mask frame and the sealing cushion together forming a breathing cavity.



256. The Accused Products include a headgear connector adapted to engage the interfacing structure with a snap-fit, said headgear connector including a pair of lower headgear clip anchors adapted to be engaged with respective ones of a pair of lower headgear clips to attach a pair of lower side straps.

257. By way of example, the Easy Frame of the Simplus System includes a headgear connector adapted to engage the interfacing structure with a snap-fit, said headgear connector including a pair of lower headgear clip anchors adapted to be engaged with respective ones of a pair of lower headgear clips to attach a pair of lower side straps.

258. The Accused Products include a headgear connector which includes a fixed forehead support, said fixed forehead support including a pair of openings adapted to attach to respective ones of a pair of upper side straps.

259. By way of example, the Easy Frame of the Simplus System includes a headgear connector which includes a fixed forehead support, said fixed forehead support including a pair of openings adapted to attach to respective ones of a pair of upper side straps.

260. 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.

261. ResMed also gives notice to the public that its products are patented by appropriately marking those products with its applicable patent numbers as permitted by 35 U.S.C. §287(a).

262. Therefore, on information and belief, F&P either must have known about the '196 patent or was willfully blind to the '196 patent at the time it engaged in their infringing activities and, in any event, was aware of the '196 patent at least as early as the date it was served with this complaint.

263. F&P was aware of the '196 patent, at least in part through written communications from ResMed on or about February 12, 2015 and a meeting between ResMed and F&P on or about March 4, 2015 notifying F&P of its infringement of this patent.

264. F&P also actively induces infringement of the '196 patent in violation of 35 U.S.C. § 271(b). F&P encourages and intends the use, importation, and sale of the Accused Products within the United States. For example, at least on its website, F&P advertises the Accused Products for use within the United States and instructs patients and health care providers on the use of the Accused Products.

265. F&P also contributes to the infringement of the '196 patent in violation of 35 U.S.C. § 271(c). F&P sells within the United States, and/or imports into the

United States, components of the Accused Products that are material parts of the invention of the asserted claims of the '196 patent, are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by F&P to be especially made or especially adapted for use in an infringement of the '196 patent.

266. On information and belief, F&P lacks reasonable defenses for their infringing activities and therefore knows the use, importation, and sale of the Accused Products within the United States infringes the '196 patent.

267. On information and belief, F&P's infringement of the '196 patent has been, and continues to be, willful and deliberate by continuing its acts of infringement after becoming aware of the '196 patent and its infringement of that patent. F&P's conduct has been in reckless disregard of ResMed's patent rights.

268. As a result of F&P's infringement of the '196 patent, ResMed has suffered and will continue to suffer financial injury and irreparable injury to its business and reputation.

269. ResMed is entitled to recover from F&P the damages adequate to compensate for F&P's infringement, which have yet to be determined.

270. F&P's acts of infringement have caused and will continue to cause irreparable harm to ResMed for which there is no adequate remedy at law unless and until enjoined by this Court.

TWENTY-SECOND CLAIM FOR RELIEF

F&P'S INFRINGEMENT OF U.S. PATENT NO. 9,027,556

271. The allegations of Paragraphs 1-270 are incorporated herein by reference.

272. F&P has directly infringed the claims of the '556 patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, the Accused

Products, including but not limited to F&P's Simplus System product line and Eson System product line.

273. By way of example, the Accused Products, including at least the Simplus System, specifically infringe at least claims 1, 2, 4, 8-10, and 12-66 of the '556 patent. By way of example, the Accused Products, including at least the Eson System, specifically infringe at least claims 1, 4, 6, 9, 10, 14, 17, 19-22, 25-27, 29-33, 36-39, 41, 42, 44-49, and 52. By way of example, the Accused Products, including at least the Eson 2 System, specifically infringe at least claims 1, 4, 6, 9, 10,14, 17, 19, 20-22, 25-27, 29-33, 36-39, 41-42, 44-49, and 52.

274. By way of example, the Accused Products specifically infringe at least claim 1 of the '556 patent in the following way.

275. The Accused Products are mask systems for delivery of a supply of gas at positive pressure to a patient for medical treatment.

276. By way of example, F&P markets the Simplus System for the treatment of sleep apnea through the use of continuous positive airway pressure.

277. The Accused Products include a frame module.

278. By way of example, the Simplus System includes a frame module, the Easy Frame.

279. The Accused Products include a cushion module provided to the frame module and adapted to form a seal with the patient's face.

280. By way of example, the Simplus System includes a cushion module, which includes the RollFit Seal, provided to the frame module and adapted to form a seal with the patient's face

281. The Accused Products include an elbow module rotatably attached to the frame module such that the frame module acts as a carrier and bearing surface for the elbow module.

282. By way of example, the Simplus System includes an elbow module rotatably attached to the frame module such that the frame module acts as a carrier and bearing surface for the elbow module.

283. By way of example, below is a picture of the EasyFrame of the Simplus System, which includes the frame module and a Ball-and-Socket elbow module rotatably attached to the frame module.

284. The Accused Products include an elbow module that is rotatably attached to the frame module such that the elbow module is rotatable 360 degrees relative to the frame module in use.

285. By way of example, the elbow module of the Simplus System Easy Frame is rotatable 360 degrees relative to the frame module.

286. The Accused Products include an elbow module adapted to be connected to an air delivery tube that delivers breathable gas to the patient.

287. By way of example, the elbow module of the Simplus System Easy Frame is adapted to be connected to an air delivery tube that delivers breathable gas to the patient.

288. The Accused Products include headgear removably attachable to the frame module to assist in maintaining the mask system in a desired adjusted position on the patient's face.

289. By way of example Simplus System includes the ErgoForm Headgear that is removably attachable to the frame module, including by way of example with Easy-Clip Hooks, that assists in maintaining the mask system in a desired adjusted position on the patient's face.

290. The Accused Products include a cushion module that includes a main body and a cushion, the main body at least partly defines a breathing chamber.

291. By way of example RollFit Seal of the Simplus System includes a main body and a cushion, the main body at least partly defines a breathing chamber. The main body and cushion are shown in the photo below.

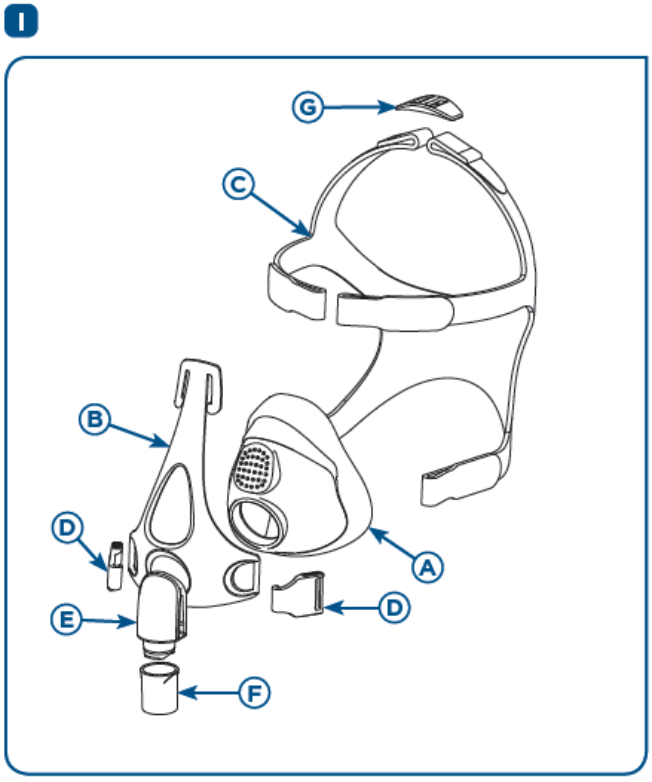
292. The Accused Products include a frame module and main body having shapes that prevent relative rotation when the frame module is attached to the main body.

293. By way of example Simplus System includes an Easy Frame and main body, including the RollFit Seal, having shapes that prevent relative rotation when the frame module is attached to the main body. For example, the main body snap

fits into the Easy Frame, preventing relative rotation of the Easy Frame and the main body.

294. The Accused Products include an outer portion of the main body that is exposed and remains uncovered by the frame module when the frame module and the main body are attached.

295. By way of example Simplus System includes an outer portion of the main body that is exposed and remains uncovered by the Easy Frame when the main body and the Easy Frame are attached. For example, the Easy Frame includes an opening between the upper member and lower member that leaves portions of the main body exposed when the Easy Frame and main body are attached. As another example, the Easy Frame is narrower than the main body, leaving portions of the main body exposed when the Easy Frame and main body are attached as illustrated in the figure below.



296. The Accused Products include a main body and cushion, which together comprise an integrated component, the main body comprising a molded material that interfaces with the frame module and the cushion comprises a molded silicone material adapted to interface with patient's face, and the molded material of the main body is a more rigid material than the molded silicone material of the cushion.

297. By way of example Simplus System includes a main body and cushion, which together comprise an integrated component. The main body is a molded material that interfaces with the Easy Frame and the cushion comprises a molded silicone material adapted to interface with patient's face, and the molded material of the main body is a more rigid material than the molded silicone material of the cushion.

298. 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.

299. ResMed also gives notice to the public that its products are patented by appropriately marking those products with its applicable patent numbers as permitted by 35 U.S.C. §287(a).

300. F&P was also aware of at least the '556 patent—and its infringement of the claims thereof—no later than August and September 2015, through written communications and a meeting and presentation from ResMed to F&P notifying F&P of its infringement.

301. Therefore, on information and belief, F&P either must have known about the '556 patent or was willfully blind to the '556 patent at the time it engaged in its infringing activities and, in any event, was aware of the '556 patent at least as early as the date it was served with this complaint.

302. F&P also actively induces infringement of the '556 patent in violation of 35 U.S.C. § 271(b). F&P encourages and intends the use, importation, and sale of the Accused Products within the United States. For example, at least on its website, F&P advertises the Accused Products for use within the United States and instructs patients and health care providers on the use of the Accused Products.

303. F&P also contributes to the infringement of the '556 patent in violation of 35 U.S.C. § 271(c). F&P sells within the United States, and/or imports into the United States, components of the Accused Products that are material parts of the invention of the asserted claims of the '556 patent, are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by F&P to be especially made or especially adapted for use in an infringement of the '556 patent.

304. On information and belief, F&P lacks reasonable defenses for their infringing activities and therefore knows the use, importation, and sale of the Accused Products within the United States infringes the '556 patent.

305. On information and belief, F&P's infringement of the '556 patent has been, and continues to be, willful and deliberate by continuing its acts of infringement after becoming aware of the '556 patent and its infringement of that patent. F&P's conduct has been in reckless disregard of ResMed's patent rights.

306. As a result of F&P's infringement of the '556 patent, ResMed has suffered and will continue to suffer financial injury and irreparable injury to its business and reputation.

307. ResMed is entitled to recover from F&P the damages adequate to compensate for such infringement, which have yet to be determined.

308. F&P's acts of infringement have caused and will continue to cause irreparable harm to ResMed for which there is no adequate remedy at law unless and until enjoined by this Court.

TWENTY-THIRD CLAIM FOR RELIEF

F&P'S INFRINGEMENT OF U.S. PATENT NO. 9,119,931

309. The allegations of Paragraphs 1-308 are incorporated herein by reference.

310. F&P has directly infringed the claims of the '931 patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, the Accused Products, including but not limited to F&P's Simplus product line and Eson product line.

311. By way of example, the Accused Products, including at least the Simplus System, specifically infringe at least claims 1, 5-8, 11-14, 18-22, 25, 26, 28-31, 33, 34-37, 40, 41, 43, 46, 48, 49, 51, 53-55, 57, 58, 60-65, 69, 70, 71, 77, and 78 of the '931 patent. By way of example, the Accused Products, including at least the Eson System, specifically infringe at least claims 33-37, 40, 41, 57, 58, 60-64, 69, 71, 77, and 78. By way of example, the Accused Products, including at least the Eson 2 System, specifically infringe at least claims 33-37, 40, 41, 57, 58, 60, 61, 69, 71, 77, and 78. By way of example, the Accused Products, including the Simplus Mask System as well as all F&P CPAP Devices for use with the F&P Simplus Mask System, including at least the F&P ICON + CPAP Series and the F&P SleepStyle

CPAP Series; as well as all breathing tubes for use with the Simplus Mask System, including the breathing tubes included with the F&P CPAP Devices, the F&P Standard Breathing Tube, and F&P ThermoSmart Heated Breathing Tube specifically infringe at least claim 50, 56, and 79 of the '931 patent. By way of example, the Accused Products, including the Eson Mask System and Eson 2 Mask System, as well as all F&P CPAP Devices for use with the F&P Simplus Mask System, including at least the F&P ICON + CPAP Series and the F&P SleepStyle CPAP Series; as well as all breathing tubes for use with the Simplus Mask System, including the breathing tubes included with the F&P CPAP Devices, the F&P Standard Breathing Tube, and F&P ThermoSmart Heated Breathing Tube specifically infringe at least claim 56 and 79 of the '931 patent.

312. The Accused Products specifically infringe at least claim 33 of the '931 patent in the following way

313. The Accused Products are masks systems.

314. The Accused Products include a shroud module wherein the shroud module includes headgear connectors adapted to removably attach to respective headgear straps of headgear.

315. By way of example, the Simplus System includes a shroud module wherein the shroud module includes headgear connectors adapted to removably attach to respective headgear straps of headgear. Below is a photo of the Simplus System shroud module.

316. The Accused Products include a cushion module comprising a frame defining a breathing chamber; a cushion to form a seal with the patient's face in at least a nasal bridge region; and a cheek region of the patient's face.

317. By way of example, the RollFit Seal of the Simplus System includes a cushion module comprising a frame defining a breathing chamber; a cushion to form a seal with the patient's face in at least a nasal bridge region; and a cheek region of the patient's face. Below is a photo of the Simplus System cushion module.

318. The Accused Products have a cushion that is constructed of a first, relatively soft, elastomeric material and the frame is constructed of a second material that is more rigid than the cushion.

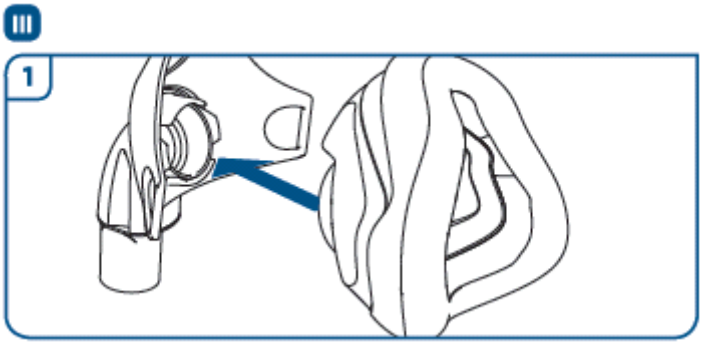
319. By way of example, the RollFit Seal of the Simplus System has a cushion that is constructed of a first, relatively soft, elastomeric material and the frame is constructed of a second material that is more rigid than the cushion.

320. The Accused Products have a cushion that includes a nasal bridge portion of the cushion which has one or more folds to provide in use a higher level of adaptability or flexibility to the nasal bridge region of the cushion module relative to another region of the cushion module.

321. By way of example, the RollFit Seal of the Simplus System includes a nasal bridge portion of the cushion which has one or more folds to provide in use a higher level of adaptability or flexibility to the nasal bridge region of the cushion module relative to another region of the cushion module.

322. The Accused Products include a shroud module and a cushion module that are configured to be removably coupleable to one another.

323. By way of example, the Simplus System includes a shroud module and a cushion module that are configured to be removably coupleable to one another.



324. The Accused Products include a shroud module that includes a front opening of substantively circular shape and a retaining portion extending rearwardly from the front opening, towards the frame, and structured to snap-fit with the cushion module.

325. By way of example, the Easy Frame of the Simplus System includes a shroud module that includes a front opening of substantively circular shape and a retaining portion extending rearwardly from the front opening, towards the frame, and structured to snap-fit with the cushion module.

326. By way of example the F&P ICON + CPAP Series and the F&P SleepStyle CPAP Series are flow generators to to generate a supply of air at positive pressure to be delivered to the Simplus Mask System. Further, by way of example, the air delivery tubes for use with the Simplus Mask System, including the breathing tubes included with the F&P CPAP Devices, the F&P Standard Breathing Tube, and F&P ThermoSmart Heated Breathing Tube are air delivery tubes configured to deliver the supply of air from the flow generator to the Simplus Mask System.

327. 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.

328. ResMed also gives notice to the public that its products are patented by appropriately marking those products with its applicable patent numbers as permitted by 35 U.S.C. §287(a).

329. Therefore, on information and belief, F&P either must have known about the ’931 patent or was willfully blind to the ’931 patent at the time it engaged in its infringing activities and, in any event, was aware of the ’931 patent at least as early as the date it was served with this complaint.

330. F&P also actively induces infringement of the ’931 patent in violation of 35 U.S.C. § 271(b). F&P encourages and intends the use, importation, and sale of the Accused Products within the United States. For example, at least on its website, F&P advertises the Accused Products for use within the United States and instructs patients and health care providers on the use of the Accused Products.

331. F&P also contributes to the infringement of the ’931 patent in violation of 35 U.S.C. § 271(c). F&P sells within the United States, and/or imports into the United States, components of the Accused Products that are material parts of the invention of the asserted claims of the ’931 patent, are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by F&P to be especially made or especially adapted for use in an infringement of the ’931 patent.

332. On information and belief, F&P lacks reasonable defenses for their infringing activities and therefore knows the use, importation, and sale of the Accused Products within the United States infringes the '931 patent.

333. On information and belief, F&P's infringement of the '931 patent has been, and continues to be, willful and deliberate by continuing its acts of infringement after becoming aware of the '931 patent and its infringement of that patent. F&P's conduct has been in reckless disregard of ResMed's patent rights.

334. As a result of F&P's infringement of the '931 patent, ResMed has suffered and will continue to suffer damage.

335. ResMed is entitled to recover from F&P the damages adequate to compensate for such infringement, which have yet to be determined.

336. F&P's acts of infringement have caused and will continue to cause irreparable harm to ResMed for which there is no adequate remedy at law unless and until enjoined by this Court.

TWENTY-FOURTH CLAIM FOR RELIEF

F&P'S INFRINGEMENT OF U.S. PATENT NO. 9,242,062

337. The allegations of Paragraphs 1-336 are incorporated herein by reference.

338. F&P has directly infringed the claims of the '062 patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, the Accused Products, including but not limited to F&P's Simplus product line and Eson product line.

339. By way of example, the Accused Products, including at least the Simplus System, specifically infringe at least claims 1,3-6, 8, 9, 12, and 17-16 of the '062 patent. By way of example, the Accused Products, including at least the Eson System, specifically infringe at least claims 1, 3, 5, 8, 9, 12, 17-20, and 22-24. By

way of example, the Accused Products, including at least the Eson 2 System, specifically infringe at least claims 1, 3, 5, 8, 9, 12, 17-20, and 22-24.

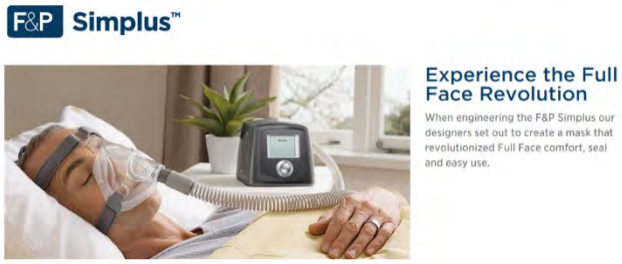
340. By way of example, the Accused Products specifically infringe at least claim 1 of the '062 patent.

341. The Accused Products include an elastomeric cushion for a breathing mask.

342. By way of example, Simplus System includes an elastomeric cushion for a breathing mask, which includes the RollFit Seal. Below is a photo of the Simplus System elastomeric cushion.

343. The Accused Products are configured for sealed delivery of a flow of breathable gas at a positive pressure with respect to ambient air pressure to an entrance of a patient's airways including at least an entrance of the patient's nares.

344. By way of example, Simplus System is configured for sealed delivery of a flow of breathable gas at a positive pressure with respect to ambient air pressure to an entrance of a patient's airways including the patient's nares and mouth.



345. The Accused Products include a peripherally extending shell engaging portion configured to secure the elastomeric cushion to a shell of the breathing mask.

346. By way of example, the Simplus System includes a peripherally extending shell engaging portion configured to secure the elastomeric cushion to a shell of the breathing mask.

347. The Accused Products include a sealing lip configured to contact the patient's face.

348. By way of example, the Simplus System includes a portion of the elastomeric cushion for contacting the patients face.

349. The Accused Products include a sealing lip defining an opening adapted to receive at least a part of the patient's nose.

350. By way of example, the RollFit Seal of the Simplus System includes a portion of the elastomeric cushion defining an opening adapted to receive at least a part of the patient's nose.

351. The Accused Products include a sealing lip comprising an elastomeric wall divided into a first zone, a second zone opposite the first zone and a pair of intermediate zones spanning between the first and second zones.

352. By way of example, the Simplus System includes an elastomeric wall divided into a first zone for contacting the patient's nose, a second zone opposite the first zone for contacting the patient's face below the lips, and a pair of intermediate zones spanning between the first and second zones contacting the patient's cheeks.

353. The Accused Products include a sealing lip where the thickness of the elastomeric wall in the first and second zones is thinner than a thickness of the elastomeric wall in the intermediate zones so that when the elastomeric cushion engages the patient's face a thickness of a portion of the elastomeric wall in contact with the patient's face varies from the pair of intermediate zones to the first zone and varies from the pair of intermediate zones to the second zone and so that the pair of intermediate zones has a higher load-bearing capability than the first and second zones.

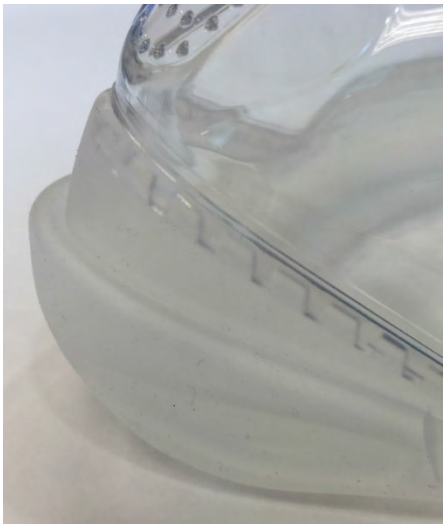
354. By way of example, the Simplus System includes an elastomeric wall where the thickness of the zone for contacting the patient's nose and a zone for contacting the patient's face below the lips is thinner than the intermediate zones contacting the patient's cheeks. Those intermediate zones have a higher load-bearing capability than the zone for contacting the patient's nose and the zone for contacting the patient's face below the lips.

355. The Accused Products include a first zone that comprises a portion of the elastomeric cushion adapted to sealingly engage a bridge of a patient's nose and the second zone comprises a portion of the elastomeric cushion adapted to sealingly engage the patient's face at a location opposite the first zone.

356. By way of example, the Simplus System include a first zone that comprises a portion of the elastomeric cushion adapted to sealingly engage a bridge of a patient's nose and the second zone comprises a portion of the elastomeric cushion adapted to sealingly engage the patient's face at a location opposite the first zone below the patient's lips.

357. The Accused Products include a peripheral wall extending from the shell engaging portion to the sealing lip, the peripheral wall comprising a bellows structure positioned between the shell engaging portion and the first zone of the sealing lip.

358. By way of example, the RollFit Seal of the Simplus System includes a peripheral wall extending from the shell engaging portion to the sealing lip, the peripheral wall comprising a bellows structure positioned between the shell engaging portion and the first zone of the sealing lip for contacting the patient's nose.



359. 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.

360. ResMed also gives notice to the public that its products are patented by appropriately marking those products with its applicable patent numbers as permitted by 35 U.S.C. §287(a).

361. Therefore, on information and belief, F&P either must have known about the '062 patent or was willfully blind to the '062 patent at the time it engaged in its infringing activities and, in any event, was aware of the '062 patent at least as early as the date it was served with this complaint.

362. F&P also actively induces infringement of the '062 patent in violation of 35 U.S.C. § 271(b). F&P encourages and intends the use, importation, and sale of the Accused Products within the United States. For example, at least on its website, F&P advertises the Accused Products for use within the United States and instructs patients and health care providers on the use of the Accused Products.

363. F&P also contributes to the infringement of the '062 patent in violation of 35 U.S.C. § 271(c). F&P sells within the United States, and/or imports into the

United States, components of the Accused Products that are material parts of the invention of the asserted claims of the '062 patent, are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by F&P to be especially made or especially adapted for use in an infringement of the '062 patent.

364. On information and belief, F&P lacks reasonable defenses for their infringing activities and therefore knows the use, importation, and sale of the Accused Products within the United States infringes the '062 patent.

365. On information and belief, F&P's infringement of the '062 patent has been, and continues to be, willful and deliberate by continuing its acts of infringement after becoming aware of the '062 patent and its infringement of that patent. F&P's conduct has been in reckless disregard of ResMed's patent rights.

366. As a result of F&P's infringement of the '062 patent, ResMed has suffered and will continue to suffer financial injury and irreparable injury to its business and reputation.

367. ResMed is entitled to recover from F&P the damages adequate to compensate for F&P's infringement, which have yet to be determined.

368. F&P's acts of infringement have caused and will continue to cause irreparable harm to ResMed for which there is no adequate remedy at law unless and until enjoined by this Court.

TWENTY-FIFTH CLAIM FOR RELIEF

F&P'S INFRINGEMENT OF U.S. PATENT NO. 9,381,316

369. The allegations of Paragraphs 1-368 are incorporated herein by reference.

370. F&P has directly infringed the claims of the '316 patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, the Accused

Products, including but not limited to F&P's Simplus System product line and Eson System product line.

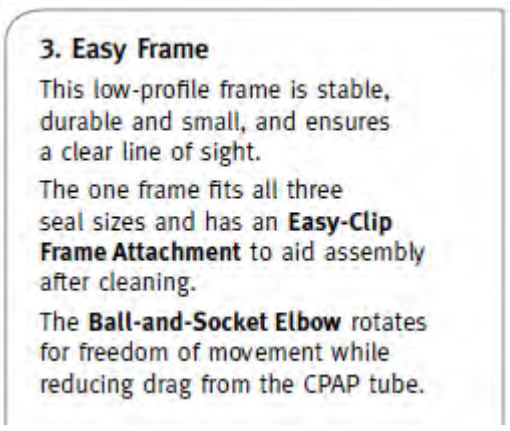
371. By way of example, the Accused Products, including the Simplus Mask System, specifically infringe at least claim 1-2, 7-8, 10, 12-20, 22-36, 38-57, 65-66, 68-72, 74-78, 80-84 of the '316 patent. By way of example, the Accused Products, including the Simplus Mask System as well as all F&P CPAP Devices for use with the F&P Simplus Mask System, including at least the F&P ICON + CPAP Series and the F&P SleepStyle CPAP Series; as well as all breathing tubes for use with the Simplus Mask System, including the breathing tubes included with the F&P CPAP Devices, the F&P Standard Breathing Tube, and F&P ThermoSmart Heated Breathing Tube specifically infringe at least claim 21, 37, 58, 73, and 85 of the '316 patent.

372. By way of example, the Accused Products specifically infringe at least claim 46 of the '316 patent.

373. The Accused Products are an interchangeable mask system for delivering breathable gas to a patient.

374. The Accused Products include at least first and second cushion components that are different structurally from one another in at least one aspect.

375. By way of example, the Simplus System includes at least first and second cushion components, RollFit seals, that are different structurally from one another in at least one aspect, namely in size.



376. The Accused Products have cushion components wherein each of the at least first and second cushion components including a front portion and a cushion structured to engage a patient's face.

377. By way of example, the Simplus System has cushion components wherein each of the at least first and second cushion components including a front portion and a cushion structured to engage a patient's face.

378. The Accused Products have cushion components wherein the front portion and the cushion of each of the at least first and second cushion components define a mask interior breathing chamber.

379. By way of example, the Simplus System has cushion components wherein the front portion and the cushion of each of the at least first and second RollFit Seal cushion components define a mask interior breathing chamber.

380. The Accused Products have cushion components wherein the front portion of each of the at least first and second cushion components have an opening by which the breathable gas is delivered to the mask interior breathing chamber thereof and a protrusion that is spaced apart and superior to the opening.

381. By way of example, the Simplus System has RollFit Seal cushion components wherein the front portion of each of the at least first and second cushion components have an opening by which the breathable gas is delivered to the mask

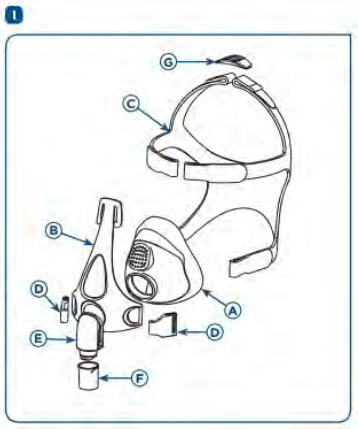
interior breathing chamber thereof and a protrusion that is spaced apart and superior to the opening.

382. The Accused Products have a common frame configured to interchangeably interface with the front portion of each of the at least first and second cushion components.

383. By way of example, the Easy Frame of the Simplus System is a common frame configured to interchangeably interface with the front portion of each of the at least first and second cushion components.

384. The Accused Products have a common frame wherein the common frame is external to the mask interior breathing chamber defined by each of the at least first and second cushion components.

385. By way of example, the Easy Frame of the Simplus System is a common frame wherein the common frame is external to the mask interior breathing chamber defined by each of the at least first and second cushion components.



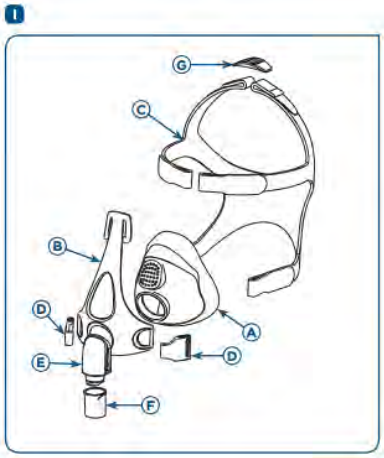
386. The Accused Products have a common frame wherein the common frame includes a first opening having a closed shape and a second opening having a closed shape that is spaced apart and superior to the first opening.

387. By way of example, the Easy Frame of the Simplus System has a common frame wherein the common frame includes a first opening having a closed shape and a second opening having a closed shape that is spaced apart and superior to the first opening.

388. The Accused Products have a common frame wherein the protrusion of each of the at least first and second cushion components is structured to engage with the common frame adjacent the second opening substantially along an anterior-

posterior axis and prevent rotation between the common frame and the front portion of each of the at least first and second cushion components.

389. By way of example, the Easy Frame of the Simplus System is a common frame wherein the protrusion of each of the at least first and second cushion components is structured to engage with the common frame adjacent the second opening substantially along an anterior-posterior axis and prevent rotation between the common frame and the front portion of each of the at least first and second cushion components.

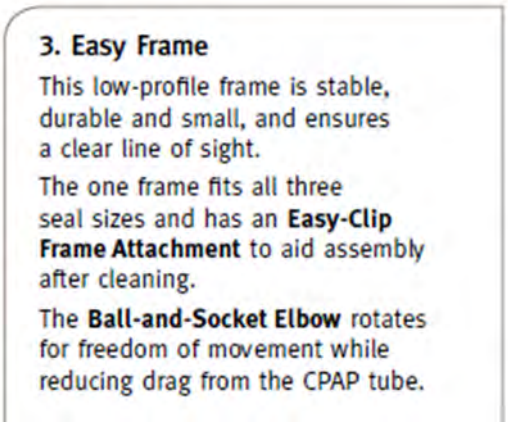


390. The Accused Products have a common frame wherein the front portion of each of the at least first and second cushion components is relatively harder than the cushion thereof.

391. By way of example, the Simplus System has the front portion of each of the at least first and second RollFit Seal cushion components that is relatively harder than the cushion thereof.

392. The Accused Products have a common frame wherein the front portion, the cushion, and the mask interior breathing chamber thereof of each of the at least first and second cushion components form a unit that as a whole is interchangeable with the common frame.

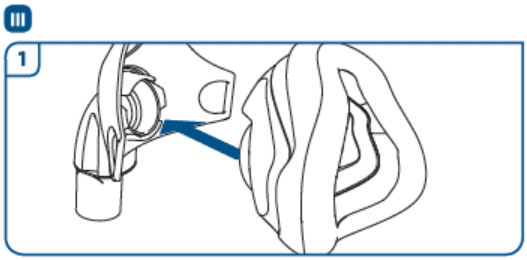
393. By way of example, the Easy Frame of the Simplus System is a common frame wherein the front portion, the cushion, and the mask interior breathing chamber thereof of each of the at least first and second cushion components form a unit that as a whole is interchangeable with the common frame.



394. The Accused Products have a common frame wherein each of the at least first and second cushion components is structured to engage with the common frame in a fixed, non-adjustable position to prevent any relative or adjustable

movement between each of the at least first and second cushion components and the common frame.

395. By way of example, the Simplus System has a common frame wherein each of the at least first and second cushion components is structured to engage with the common frame in a fixed, non-adjustable position to prevent any relative or adjustable movement between each of the at least first and second cushion components and the common frame.



396. By way of example the F&P ICON + CPAP Series and the F&P SleepStyle CPAP Series are blowers to supply breathable gas at positive pressure to the Simplus Mask System. Further, by way of example, the breathing tubes for use with the Simplus Mask System, including the breathing tubes included with the F&P CPAP Devices, the F&P Standard Breathing Tube, and F&P ThermoSmart Heated Breathing Tube are conduits to pass the breathable gas from the blower to the Simplus Mask System.

397. 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.

398. ResMed also gives notice to the public that its products are patented by appropriately marking those products with its applicable patent numbers as permitted by 35 U.S.C. §287(a).

399. Therefore, on information and belief, F&P either must have known about the '316 patent or was willfully blind to the '316 patent at the time it engaged in its infringing activities and, in any event, was aware of the '316 patent at least as early as the date it was served with this complaint.

400. F&P also actively induces infringement of the '316 patent in violation of 35 U.S.C. § 271(b). F&P encourages and intends the use, importation, and sale of the Accused Products within the United States. For example, at least on its website, F&P advertises the Accused Products for use within the United States and instructs patients and health care providers on the use of the Accused Products.

401. F&P also contributes to the infringement of the '316 patent in violation of 35 U.S.C. § 271(c). F&P sells within the United States, and/or imports into the United States, components of the Accused Products that are material parts of the invention of the asserted claims of the '316 patent, are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by F&P to be especially made or especially adapted for use in an infringement of the '316 patent.

402. On information and belief, F&P lacks reasonable defenses for their infringing activities and therefore knows the use, importation, and sale of the Accused Products within the United States infringes the '316 patent.

403. On information and belief, F&P's infringement of the '316 patent has been, and continues to be, willful and deliberate by continuing its acts of infringement after becoming aware of the '316 patent and its infringement of that patent. F&P's conduct has been in reckless disregard of ResMed's patent rights.

404. As a result of F&P's infringement of the '316 patent, ResMed has suffered and will continue to suffer financial injury and irreparable injury to its business and reputation.

405. ResMed is entitled to recover from F&P the damages adequate to compensate for F&P's infringement, which have yet to be determined.

406. F&P's acts of infringement have caused and will continue to cause irreparable harm to ResMed for which there is no adequate remedy at law unless and until enjoined by this Court.

V. PRAYER FOR RELIEF

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

(a) That a declaratory judgment that ResMed has not infringed, does not infringe, and will not infringe, either directly or indirectly, any valid claim of the F&P '807, '741, '345, '641, '902, '072, '547, '624 and '197 patents, either literally or under the doctrine of equivalents be entered;

(b) That a declaratory judgment that the claims of the F&P '807, '741, '345, '641, '902, '072, '547, '624 and '197 patents are invalid be entered;

(c) That F&P is liable for infringement of the asserted ResMed Patents-in-Suit under 35 U.S.C. §271 through the manufacture, use, importation, offer for sale and/or sale of infringing products and/or any of the other acts prohibited by 35 U.S.C. §271;

(d) That F&P and each of its officers, agents, employees, parents, subsidiaries, representatives, successors and assigns and those in active concert or participation with them directly or indirectly, be enjoined from further infringing in any manner any of the Patents-in-Suit pursuant to 35 U.S.C. §283;

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

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

(g) That ResMed be awarded pre-judgment and post-judgment interest and costs against F&P as permitted by 35 U.S.C. § 284;

(h) That F&P's infringement of the asserted ResMed Patents-in-Suit has been and continues to be willful justifying an enhanced award of damages under 35 U.S.C. § 284;

(i) That this action be determined to be an exceptional case and ResMed be awarded its attorney's fees, costs and expenses under 35 U.S.C. § 285; and

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

DEMAND FOR JURY TRIAL

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

Dated: September 7, 2016

FISH & RICHARDSON P.C.

By: */s/ Roger A. Denning*
Roger A. Denning
denning@fr.com

Attorney for Defendants/Counterclaimants
ResMed Inc., ResMed Corp, and ResMed Ltd

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on September 7, 2016 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail and regular mail.

/s/ *Roger A Denning*
Roger A. Denning