

1 Roger A. Denning, SBN 228998, denning@fr.com  
2 Seth M. Sproul, SBN 217711, sproul@fr.com  
3 Scott A. Penner, SBN 253716, penner@fr.com  
4 Fish & Richardson P.C.  
5 12390 El Camino Real  
6 San Diego, CA 92130  
7 Phone: 858-678-5070 / Fax: 858-678-5099

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

13 *Attorneys for Plaintiffs*

14 UNITED STATES DISTRICT COURT  
15 SOUTHERN DISTRICT OF CALIFORNIA

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

20 Plaintiffs,

21 v.

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

27 Defendants.

Case No. '13CV1246 MMAWMC

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

28 Case No. \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

5 **JURISDICTION AND VENUE**

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

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

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

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

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

7 **THE PATENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

13   **FIRST CLAIM FOR RELIEF**

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

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

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

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

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



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

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

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

12 **SECOND CLAIM FOR RELIEF**  
13 **DECLARATORY JUDGMENT OF BMC'S INFRINGEMENT OF U.S.**  
14 **PATENT NO. 7,159,587**

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

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

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

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

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

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

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

16 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

16 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

19 **FIFTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

17 **SIXTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

15 **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

### **EIGHTH CLAIM FOR RELIEF**

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

13  
14  
15           83. The allegations of Paragraphs 1-38 are incorporated herein by  
16 reference.

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

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

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

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

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

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

11 **NINTH CLAIM FOR RELIEF**

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

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

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

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

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



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

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

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

10 **TENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

28

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

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

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

#### **ELEVENTH CLAIM FOR RELIEF**

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

14  
15  
16           102. The allegations of Paragraphs 1-38 are incorporated herein by  
17 reference.

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

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

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

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

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

14                                   **TWELFTH CLAIM FOR RELIEF**  
15                   **DECLARATORY JUDGMENT OF 3B'S INFRINGEMENT OF U.S.**  
16                                   **PATENT NO. 7,487,772**

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

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

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

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

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

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

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

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

18 **THIRTEENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

15 **FOURTEENTH CLAIM FOR RELIEF**

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

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

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

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

28

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

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

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

### 13   **FIFTEENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

10 **SIXTEENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

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

28



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

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

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

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

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

16  
17 **DEMAND FOR JURY TRIAL**

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

21 Dated: May 29, 2013

FISH & RICHARDSON P.C.

22  
23 By: /s/ Roger A. Denning

Roger A. Denning

24  
25 Attorneys for Plaintiffs RESMED INC.,  
26 RESMED CORP, and RESMED LTD  
27  
28