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5 Attorneys for the Plaintiff
6 NELLCOR PURITAN BENNETT, INC. and
MALLINCKRODT INC.

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 NELLCOR PURITAN BENNETT, INC.,)
a Delaware Corporation, and)
11 MALLINCKRODT INC.,)
a Delaware Corporation,)
12)
Plaintiffs,)
13)
v.)
14)
ENGINEERED MEDICAL SYSTEMS, INC.)
15 an Indiana Corporation, and TRI-ANIM)
HEALTH SERVICES, INC., a California)
16 Corporation,)
Defendants.)

Civil Action No. C 02-4618 BZ
Complaint for Patent Infringement
Demand for Jury Trial

17
18 Plaintiffs, Nellcor Puritan Bennett, Inc. (“NPB”) and Mallinckrodt Inc. (“Mallinckrodt”),
19 for their complaint against defendants, Engineered Medical Systems, Inc. (“EMS”), and Tri-Anim
20 Health Services, Inc. (“Tri-Anim”), state and allege:

21 **JURISDICTION AND VENUE**

22 1. This is an action for patent infringement arising under the patent laws, Title 35,
23 United States Code. The Court has original jurisdiction over the subject matter pursuant to the
24 provisions of 28 USC §§ 1331 and 1338(a). Venue is proper in this district in accordance with
25 28 USC §§ 1391(b) and 1400(b).

26 **INTRADISTRICT ASSIGNMENT**

27 2. Intradistrict assignment of this action to the San Francisco Division of this Court
28

1 is appropriate pursuant to Civil Local Rule 3-2(d) because this action arose in Alameda County.

2 **THE PARTIES**

3 3. Plaintiff, NPB, is a Delaware Corporation having its principal place of business
4 in Pleasanton, California.

5 4. Plaintiff, Mallinckrodt, is a corporation organized and existing under the laws of
6 the State of Delaware, and has a place of business in St. Louis, Missouri.

7 5. Upon information and belief, Defendant EMS, is an Indiana Corporation having
8 its principal place of business in Indianapolis, Indiana.

9 6. Upon information and belief, Defendant Tri-Anim, is a California Corporation
10 having its principal place of business in Sylmar, California 91342.

11 **CLAIM**

12 7. On November 24, 1992, United States Patent No. 5,166,075 (the “‘075 patent”),
13 entitled “Method for Determining Whether Respiratory Gas Is Present In a Gaseous Sample,” was
14 duly and legally issued by the United States Patent and Trademark Office. A copy of the ‘075
15 patent is attached hereto as Exhibit A.

16 8. NPB is the sole owner of all right, title, and interest to the ‘075 patent including
17 full rights to recover past and future damages thereunder.

18 9. On January 12, 1993, United States Patent No. 5,179,002 (the “‘002 patent”),
19 entitled “Apparatus for Determining Whether Respiratory Gas Is Present In a Gaseous Sample,”
20 was duly and legally issued by the United States Patent and Trademark Office. A copy of the
21 ‘002 patent is attached hereto as Exhibit B.

22 10. NPB is the sole owner of all right, title, and interest to the ‘002 patent including
23 full rights to recover past and future damages thereunder.

24 11. NPB manufactures and sells in the United States breathing apparatus and
25 components which embody the claimed inventions of the ‘075 and ‘002 patents. Mallinckrodt is
26 the exclusive sales agent of NPB’s breathing apparatus.

27 12. Upon information and belief, Defendants EMS manufactures and Tri-Anim, acting
28

1 as EMS's agent, distributes throughout the United States including within this judicial district
2 breathing apparatus products including products called the VentiSure and CO₂ Check. By reason
3 of their manufacture and distribution of these products, EMS and Tri-Anim have in the past and
4 are still infringing the '075 and '002 patents by making, using, selling, offering for sale, and/or
5 inducing others to use breathing apparatus and components which embody the patented
6 inventions.

7 13. NPB has placed statutory notices on all breathing apparatus and components made
8 and sold by it and covered by the '075 and '002 patents pursuant to 35 USC § 287, and has given
9 written notice to EMS and Tri-Anim of their infringement.

10 14. Upon information and belief, EMS and Tri-Anim have deliberately and willfully
11 infringed the '075 and '002 patents and will continue to infringe the aforesaid patents unless
12 enjoined by this Court.

13 WHEREFORE:

14 NPB and Mallinckrodt pray that this Court will enter judgement:

15 (a) Permanently enjoining and restraining defendants, their officers, directors, agents,
16 dealers, representatives, servants, and employees, and all parties acting in concert with
17 defendants, from directly or indirectly infringing, inducing infringement or contributorily
18 infringing U.S. Patent Nos. 5,166,075 and 5,179,002;

19 (b) Grant to plaintiffs an award of damages together with prejudgment interest for the
20 damages suffered by plaintiffs as a result of the infringement by defendants, and an award trebling
21 said damages in accordance with the provisions of 35 USC § 284;

22 (c) Awarding plaintiffs their costs and attorney's fees pursuant to the provisions of
23 35 USC § 285; and

24 (d) Granting to plaintiffs such other and further relief and remedy as justice may
25 require.

1 Date: September 24, 2002

Respectfully submitted

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/s/ John M. Collins

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ATTORNEYS FOR PLAINTIFF

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CERTIFICATION OF INTERESTED ENTITIES OF PERSONS

Pursuant to Civil Local Rule 3-16, the undersigned certifies that the following listed persons, associates of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Tyco Healthcare Group LP (owner of Mallinckrodt, Inc. and
Nellcore Puritan Bennett, Inc.)

Tyco International Ltd. (owner of Tyco Healthcare Group LP)

Date: September 24, 2002

/s/ John M. Collins
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ATTORNEYS FOR PLAINTIFF

DEMAND FOR JURY TRIAL

Plaintiff Nellcor Puritan Bennet demands a trial by jury in this matter.

Date: September 24, 2002

/s/ John M. Collins

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