

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

GELTIGHT ENTERPRISES, LLC,

Plaintiff,

v.

RESMED INC.; DEVILBISS  
HEALTHCARE LLC; and SLEEPNET  
CORPORATION,

Defendants.

Civil Action No. 11-cv-1044

COMPLAINT FOR PATENT  
INFRINGEMENT

JURY TRIAL REQUESTED

Plaintiff GelTight Enterprises, LLC hereby alleges the following cause of action against Defendants.

**I. PARTIES**

1. GelTight Enterprises, LLC (“GelTight”) is a Washington limited liability company having its principal place of business in Edmonds, Washington.

2. Upon information and belief, ResMed Inc. is a Delaware corporation with its principal place of business at 9001 Spectrum Center Blvd., San Diego, California 92123. Upon information and belief, ResMed Assembly US Inc., a Delaware corporation, and ResMed Corp., a Minnesota corporation, are related or affiliated entities, but whose relationship with ResMed Inc. and to the allegations herein are presently unknown. ResMed Corp. is registered to do

1 business in the State of Washington. Collectively these entities are referred to herein as  
2 “ResMed.”

3 3. Upon information and belief, DeVilbiss Healthcare LLC (“DeVilbiss”) is a  
4 Delaware corporation with its principal place of business at 100 DeVilbiss Drive, Somerset,  
5 Pennsylvania 15501. DeVilbiss is registered to do business in the State of Washington.

6 4. Upon information and belief, SleepNet Corporation is a New Hampshire  
7 corporation with its principal place of business at 5 Merrill Industrial Drive, Hampton, New  
8 Hampshire 03842. Upon information and belief, SleepNet IC DISC Corporation, a New  
9 Hampshire corporation, is a related or affiliated entity, but whose relationship with SleepNet  
10 Corporation and to the allegations herein are presently unknown. Collectively these entities are  
11 referred to herein as “SleepNet.”

## 12 II. JURISDICTION AND VENUE

13 5. This action arises under the patent laws of the United States, including  
14 35 U.S.C. § 271 and § 281. Jurisdiction is conferred upon this Court pursuant to  
15 28 U.S.C. §§ 1331 and 1338.

16 6. On information and belief, Defendants are subject to both specific and general  
17 personal jurisdiction. Defendants market and sell the accused infringing products throughout the  
18 United States and specifically to residents of this forum via retail locations and at such Internet  
19 websites as [www.amazon.com](http://www.amazon.com), [www.respshop.com](http://www.respshop.com), [www.cpap.com](http://www.cpap.com), [www.cpasupplyusa.com](http://www.cpasupplyusa.com),  
20 [www.1800cpap.com](http://www.1800cpap.com) and [www.cpapfirst.com](http://www.cpapfirst.com). Further, on information and belief, each Defendant  
21 regularly solicits and conducts business in and/or derives substantial revenue from goods and  
22 services provided to residents of Washington. Accordingly, both jurisdiction and venue are  
23 proper in this court. 28 U.S.C. §§ 1391 and 1400.

## 24 III. GELTIGHT’S PATENT RIGHTS

25 7. GelTight is the assignee of U.S. Patent No. 6,152,137 entitled “Pliable and  
26 Resilient Sealing Pad,” which issued November 28, 2000 to Alan N. Schwartz and Thomas

1 D. Theisen (“the ‘137 patent”). GelTight owns the full right, title and interest in the ‘137 patent,  
2 including the right to sue for past and present infringement.

3 8. The claims of the ‘137 patent cover, *inter alia*, a sealing pad utilizing a compliant  
4 and resiliently deformable annual gelatinous elastomer that conforms under pressure to form a  
5 substantially airtight seal between skin covering material and at least a portion of the user’s skin.

6 **IV. DEFENDANTS’ PATENT INFRINGEMENT**

7 9. On information and belief, Resmed has been and is now directly infringing one or  
8 more claims of the ‘137 patent, including without limitation claim 1, in the State of Washington,  
9 in this judicial district and elsewhere in the United States by making, using, selling and/or  
10 offering to sell products incorporating a sealing pad utilizing a compliant and resiliently  
11 deformable annual gelatinous elastomer that conforms under pressure to form a substantially  
12 airtight seal between skin covering material and at least a portion of the user’s skin. On  
13 information and belief, such infringing products include, but are not limited to, the Mirage  
14 SoftGel Nasal continuous positive airway pressure (CPAP) mask.

15 10. On information and belief, DeVilbiss has been and is now directly infringing one  
16 or more claims of the ‘137 patent, including without limitation claim 1, in the State of  
17 Washington, in this judicial district and elsewhere in the United States by making, using, selling  
18 and/or offering to sell products incorporating a sealing pad utilizing a compliant and resiliently  
19 deformable annual gelatinous elastomer that conforms under pressure to form a substantially  
20 airtight seal between skin covering material and at least a portion of the user’s skin. On  
21 information and belief, such infringing products include, but are not limited to, Serenity Nasal  
22 Gel, FlexSet Gel Nasal, EasyFit Nasal Gel, Soyala Full Face and EasyFit Full Face Gel CPAP  
23 masks.

24 11. On information and belief, SleepNet has been and is now directly infringing one  
25 or more claims of the ‘137 patent, including without limitation claim 1, in the State of  
26 Washington, in this judicial district and elsewhere in the United States by making, using, selling

1 and/or offering to sell products incorporating a sealing pad utilizing a compliant and resiliently  
2 deformable annual gelatinous elastomer that conforms under pressure to form a substantially  
3 airtight seal between skin covering material and at least a portion of the user's skin. On  
4 information and belief, such infringing products include, but are not limited to, IQ Nasal,  
5 Phantom Nasal, Mojo Gel Cushion and MiniMe Nasal CPAP masks.

6 12. Each Defendant's use, offer for sale and/or sale of its infringing product has not  
7 been under license or authority from GelTight.

8 13. Each Defendant's activities constitute direct infringement, contributory  
9 infringement and/or inducement to infringe one or more claims of the '137 patent pursuant to  
10 35 U.S.C. § 271.

11 14. As a direct result of each Defendant's infringement of the '137 patent, GelTight  
12 has suffered, and will continue to suffer, damages in an amount to be established at trial. In  
13 addition, GelTight has suffered, and continues to suffer, irreparable harm for which there is no  
14 adequate remedy at law.

15 15. Each Defendant had knowledge of GelTight's '137 patent and GelTight's patent  
16 rights before engaging in its infringing activity and before the filing of this complaint. Despite  
17 actual and/or constructive knowledge of GelTight's '137 patent, each Defendant has continued to  
18 use, offer for sale and/or sell its infringing product in the United States, including in Washington  
19 State. Each Defendant's infringement is therefore deliberate and willful and will continue unless  
20 enjoined by this Court.

21 **V. PRAYER FOR RELIEF**

22 GelTight requests the following alternative and cumulative relief:

- 23 1. Judgment in favor of GelTight that each Defendant has infringed, directly, jointly  
24 and/or indirectly, by way of intentionally inducing and/or contributing to the  
25 infringement of the '137 patent.
- 26 2. Judgment that each Defendant's infringement is and/or has been willful and  
objectively reckless.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

- 3. Permanent injunction enjoining each Defendant, and its officers, directors, agents, employees, divisions, subsidiaries, parents, and all others acting in concert therewith, from infringement, inducing or contributing to the infringement of the '137 patent, including without limitation making, using and/or selling the above-identified infringing CPAP mask products;
- 4. An award of damages adequate to compensate for the infringement, but not less than a reasonable royalty for the use of the invention, as provided under applicable law;
- 5. Exemplary damages, including as provided pursuant to 35 U.S.C. § 284, and all of GelTight's litigation expenses, including reasonable attorneys' fees and costs, as provided pursuant to 35 U.S.C. § 285 and other applicable law;
- 6. An assessment of prejudgment interest and costs; and
- 7. Such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of June, 2011.

s/ David A. Lowe, WSBA No. 24,453  
 Email: [lowe@blgip.com](mailto:lowe@blgip.com)  
 BLACK LOWE & GRAHAM<sup>PLLC</sup>  
 701 Fifth Avenue, Suite 4800  
 Seattle, WA 98104  
 T: 206.381.3300  
 F: 206.381.3301  
 Attorneys for GelTight Enterprises, LLC