

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

GELTIGHT ENTERPRISES, LLC,

Plaintiff,

v.

RESPIRONICS, INC.,

Defendant.

Civil Action No. 10-cv-1755

COMPLAINT FOR PATENT
INFRINGEMENT

JURY TRIAL REQUESTED

Plaintiff GelTight Enterprises, LLC hereby alleges the following cause of action against
Defendant Respirationics, Inc.

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, Respirationics, Inc. is a Delaware corporation with its principal place of business at 1010 Murry Ridge Lane, Murrysville, Pennsylvania 15668, and is an indirect, wholly owned subsidiary of Royal Philips Electronics NV of Amsterdam (hereinafter “Respirationics”).

II. JURISDICTION AND VENUE

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

4. On information and belief, Respiroics is subject to both specific and general personal jurisdiction. Respiroics markets and sells the accused infringing products throughout the United States and specifically to residents of this forum via retail locations and at such Internet websites as www.amazon.com, www.respsshop.com, www.cpap.com, www.cpapsupplyusa.com, www.1800cpap.com and www.cpapfirst.com. Further, on information and belief, Respiroics regularly solicits and conducts business in and/or derives substantial revenue from goods and services provided to residents of Washington. Accordingly, both jurisdiction and venue are proper in this court. 28 U.S.C. §§ 1391 and 1400.

III. GELTIGHT'S PATENT RIGHTS

5. GelTight is the assignee of U.S. Patent No. 6,152,137 entitled "Pliable and Resilient Sealing Pad," which issued November 28, 2000 to Alan N. Schwartz and Thomas D. Theisen ("the '137 patent"). GelTight owns the full right, title and interest in the '137 patent, including the right to sue for past and present infringement.

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

IV. RESPIRONICS' PATENT INFRINGEMENT

7. On information and belief, Respiroics has been and is now directly infringing one or more claims of the '137 patent, including without limitation claim 1, in the State of Washington, in this judicial district and elsewhere in the United States by making, using, selling and/or offering to sell products incorporating a sealing pad utilizing a compliant and resiliently deformable annual gelatinous elastomer that conforms under pressure to form a substantially

1 airtight seal between skin covering material and at least a portion of the user's skin. On
 2 information and belief, such infringing products include, but are not limited to, ComfortGel,
 3 ComfortGel Blue and the ProfileLite continuous positive airway pressure (CPAP) mask
 4 products.

5 8. Respironics' use, offer for sale and/or sale of its infringing product has not been
 6 under license or authority from GelTight.

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

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

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

19 **V. PRAYER FOR RELIEF**

20 GelTight requests the following alternative and cumulative relief:

- 21 1. Judgment in favor of GelTight that Respironics has infringed, directly, jointly
 22 and/or indirectly, by way of intentionally inducing and/or contributing to the
 23 infringement of the '137 patent.
- 24 2. Judgment that Respironics' infringement is and/or has been willful and
 objectively reckless.
- 25 3. Permanent injunction enjoining Respironics, and its officers, directors, agents,
 26 employees, divisions, subsidiaries, parents, and all others acting in concert
 therewith, from infringement, inducing or contributing to the infringement of the

1 '137 patent, including without limitation making, using and/or selling
2 ComfortGel, ComfortGel Blue and ProfileLite CPAP mask products;

- 3 4. An award of damages adequate to compensate for the infringement, but not less
4 than a reasonable royalty for the use of the invention, as provided under
5 applicable law;
- 6 5. Exemplary damages, including as provided pursuant to 35 U.S.C. § 284, and all of
7 GelTight's litigation expenses, including reasonable attorneys' fees and costs, as
8 provided pursuant to 35 U.S.C. § 285 and other applicable law;
- 9 6. An assessment of prejudgment interest and costs; and
- 10 7. Such other and further relief as the Court may deem just and proper.

11 RESPECTFULLY SUBMITTED this 29th day of October, 2010.

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