IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NEW YORK UNIVERSITY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 21-813 (CFC)
	)	
RESMED INC.,	)	**DEMAND FOR JURY TRIAL**
	)	
Defendant.	)	

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant ResMed Inc. ("ResMed"), by and through the undersigned counsel, submits this Answer and Affirmative Defenses in response to Plaintiff New York University's ("NYU" or "Plaintiff") Complaint for Patent Infringement (D.I. 1). Except as expressly admitted below, ResMed denies each and every allegation in the Complaint.

NATURE OF THE ACTION

1. ResMed admits that NYU purports to allege an action for patent infringement arising under the patent laws of the United States, but denies that it has committed any acts of patent infringement. The patents-in-suit speak for themselves. ResMed denies the remaining allegations of this paragraph.

PARTIES

2. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

3. ResMed admits that it is a Delaware corporation with a principal place of business at 9001 Spectrum Center Blvd., San Diego, CA 92123.

4. Denied.

JURISDICTION AND VENUE

5. ResMed admits that NYU purports to allege an action for patent infringement arising under the patent laws of the United States, and that this Court has subject matter jurisdiction.

6. ResMed admits that venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1400(b), and that it is incorporated in the State of Delaware. ResMed denies the remaining allegations of this paragraph.

PERSONAL JURISDICTION OVER RESMED

7. ResMed incorporates its responses to each of the preceding paragraphs as if fully set forth herein.

8. ResMed admits for the purposes of this action that this Court has personal jurisdiction over it. ResMed denies the remaining allegations of this paragraph.

9. ResMed admits that AirSense™10 AutoSet™ systems are sold in the United States, but denies the remaining allegations of this paragraph.

10. ResMed denies the allegations of this paragraph.

11. This paragraph contains legal conclusions to which no response is required. ResMed admits for the purposes of this action that this Court has personal jurisdiction over it. ResMed denies the remaining allegations of this paragraph.

12. ResMed admits for the purposes of this action that this Court has personal jurisdiction over it. ResMed denies the remaining allegations of this paragraph.

BACKGROUND

The Patents-in-Suit

13. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

14. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

15. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

16. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

17. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

United States Patent No. 9,867,955

18. ResMed admits that a copy of U.S. Patent No. 9,867,955 (the "'955 patent") is attached to the Complaint as Exhibit 1, and that the patent indicates that it is entitled "System and Method for Diagnosis and Treatment of a Breathing Pattern of a Patient," and that it issued on January 16, 2018. ResMed denies the remaining allegations of this paragraph.

19. ResMed admits that the '955 patent states "[s]ubject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 220 days," and that absent a disclaimer, the '955 patent will expire on March 21, 2024. ResMed denies the remaining allegations of this paragraph.

20. Admitted.

21. The '955 patent speaks for itself. ResMed denies the remaining allegations in this paragraph.

22. ResMed denies that the claims of the ’955 patent are valid and enforceable. ResMed admits that the claims have not expired as of the date of this Answer.

23. ResMed admits that the ’955 patent purports to claim priority to U.S. Application No. 10/642,459, filed August 14, 2003, now U.S. Patent No. 6,988,994.

24. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

United States Patent No. 6,988,994

25. ResMed admits that a copy of U.S. Patent No. 6,988,994 (the “’994 patent”) is attached to the Complaint as Exhibit 2, and that the patent indicates that it is entitled “Positive Airway Pressure System and Method for Treatment of Sleeping Disorder in Patient,” and that it issued on January 24, 2006. ResMed denies the remaining allegations of this paragraph.

26. ResMed admits that the ’994 patent states “[s]ubject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 22 days,” and that absent a disclaimer the ’994 patent will expire on September 5, 2023. ResMed denies the remaining allegations in this paragraph.

27. Admitted.

28. ResMed denies that the claims of the ’994 patent are valid and enforceable. ResMed admits that the claims have not expired as of the date of this Answer.

29. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

United States Patent No. 9,168,344

30. ResMed admits that a copy of U.S. Patent No. 9,168,344 (the “’344 patent”) is attached to the Complaint as Exhibit 3, and that the patent indicates that it is entitled “System and Method for Diagnosis and Treatment of a Breathing Pattern of a Patient,” and that it issued on October 27, 2015. ResMed denies the remaining allegations of this paragraph.

31. ResMed admits that the ’344 patent will expire on August 14, 2023.

32. Admitted.

33. The ’344 patent speaks for itself. ResMed denies the remaining allegations in this paragraph.

34. ResMed denies that the claims of the ’344 patent are valid and enforceable. ResMed admits that the claims have not expired as of the date of this Answer.

35. ResMed admits that the ’344 patent purports to claim priority to U.S. Application No. 10/642,459, filed August 14, 2003, now U.S. Patent No. 6,988,994.

36. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

United States Patent No. 9,108,009

37. ResMed admits that a copy of U.S. Patent No. 9,108,009 (the “’009 patent”) is attached to the Complaint as Exhibit 4, and that the patent indicates that it is entitled “System and Method for Diagnosis and Treatment of a Breathing Pattern of a Patient,” and that it issued on August 18, 2015. ResMed denies the remaining allegations of this paragraph.

38. ResMed admits that the ’009 patent will expire on August 14, 2023.

39. Admitted.

40. The ’009 patent speaks for itself. ResMed denies the remaining allegations in this paragraph.

41. ResMed denies that the claims of the ’009 patent are valid and enforceable. ResMed admits that the claims have not expired as of the date of this Answer.

42. ResMed admits that the ’009 patent purports to claim priority to U.S. Application No. 10/642,459, filed August 14, 2003, now U.S. Patent No. 6,988,994.

43. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

United States Patent No. 9,427,539

44. ResMed admits that a copy of U.S. Patent No. 9,427,539 (the "'539 patent") is attached to the Complaint as Exhibit 5, and that the patent indicates that it is entitled "System and Method for Diagnosis and Treatment of a Breathing Pattern of a Patient," and that it issued on August 30, 2016. ResMed denies the remaining allegations of this paragraph.

45. ResMed denies that the '539 patent will expire on February 27, 2035.

46. Admitted.

47. The '539 patent speaks for itself. ResMed denies the remaining allegations in this paragraph.

48. ResMed denies that the claims of the '539 patent are valid and enforceable. ResMed admits that the claims have not expired as of the date of this Answer.

49. ResMed admits that the '539 patent purports to claim priority to U.S. Application No. 10/642,459, filed August 14, 2003, now U.S. Patent No. 6,988,994.

50. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

United States Patent No. 9,533,115

51. ResMed admits that a copy of U.S. Patent No. 9,533,115 (the "'115 patent") is attached to the Complaint as Exhibit 6, and that the patent indicates that it is entitled "System and Method for Diagnosis and Treatment of a Breathing Pattern of a Patient," and that it issued on January 3, 2017. ResMed denies the remaining allegations of this paragraph.

52. ResMed denies that the '115 patent will expire on February 27, 2035.

53. Admitted.

54. The '115 patent speaks for itself. ResMed denies the remaining allegations in this paragraph.

55. ResMed denies that the claims of the '115 patent are valid and enforceable. ResMed admits that the claims have not expired as of the date of this Answer.

56. ResMed admits that the '115 patent purports to claim priority to U.S. Application No. 10/642,459, filed August 14, 2003, now U.S. Patent No. 6,988,994.

57. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

United States Patent No. 10,384,024

58. ResMed admits that a copy of U.S. Patent No. 10,384,024 (the "'024 patent") is attached to the Complaint as Exhibit 7, and that the patent indicates that it is entitled "System and Method for Diagnosis and Treatment of a Breathing Pattern of a Patient," and that it issued on August 20, 2019. ResMed denies the remaining allegations of this paragraph.

59. ResMed denies that the '024 patent will expire on January 3, 2031.

60. Admitted.

61. The '024 patent speaks for itself. ResMed denies the remaining allegations in this paragraph.

62. ResMed denies that the claims of the '024 patent are valid and enforceable. ResMed admits that the claims have not expired as of the date of this Answer.

63. ResMed admits that the '024 patent purports to claim priority to U.S. Application No. 10/642,459, filed August 14, 2003, now U.S. Patent No. 6,988,994.

64. ResMed is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies the allegations.

AirSense™ 10 AutoSet™

65. Admitted that Exhibit 8 of the Complaint is a product brochure entitled "ResMed Air Solutions: A new beginning," and that the brochure speaks for itself. ResMed denies the remaining allegations in this paragraph.

66. Exhibit 8 speaks for itself. ResMed denies the remaining allegations in this paragraph.

67. Exhibit 8 speaks for itself. ResMed denies the remaining allegations in this paragraph.

68. Admitted that Exhibit 9 of the Complaint is a blog entry entitled "Fall asleep faster with lower CPAP pressure," and that the blog entry speaks for itself. ResMed denies the remaining allegations in this paragraph.

69. Admitted that Exhibit 10 of the Complaint appears to be a webpage from the Apnea Board Wiki, and that the webpage speaks for itself. ResMed denies the remaining allegations in this paragraph.

Notice of the Patents-in-Suit

70. Admitted that Exhibit 11 to the Complaint appears to be a copy of a letter delivered to ResMed's offices on June 2, 2021, and that the letter speaks for itself. ResMed denies the remaining allegations in this paragraph.

71. Exhibit 11 speaks for itself. ResMed denies the remaining allegations in this paragraph.

72. Denied.

PATENT INFRINGEMENT

Count I: Infringement of United States Patent No. 9,867,955 by ResMed

73. ResMed incorporates each of its responses to the preceding paragraphs as if fully set forth herein.

74. Denied.

75. Denied.

76. Admitted that claim 1 of the '955 patent is accurately quoted and speaks for itself.

77-90. Denied.

91. This paragraph purports to "reserve[] the right to assert additional claims of the '955 patent," and therefore no response is required. To the extent a response is required, denied.

92. Denied.

Count II: Infringement of United States Patent No. 6,988,994 by ResMed

93. ResMed incorporates each of its responses to the preceding paragraphs as if fully set forth herein.

94. Denied.

95. Denied.

96. Admitted that claim 1 of the '994 patent is accurately quoted and speaks for itself.

97-109. Denied.

110. This paragraph purports to "reserve[] the right to assert additional claims of the '994 patent," and therefore no response is required. To the extent a response is required, denied.

111. Denied.

Count III: Infringement of United States Patent No. 9,168,344 by ResMed

112. ResMed incorporates each of its responses to the preceding paragraphs as if fully set forth herein.

113. Denied.

114. Denied.

115. Admitted that claim 1 of the '344 patent is accurately quoted and speaks for itself.

116-125. Denied.

126. This paragraph purports to "reserve[] the right to assert additional claims of the '344 patent," and therefore no response is required. To the extent a response is required, denied.

127. Denied.

Count IV: Infringement of United States Patent No. 9,108,009 by ResMed

128. ResMed incorporates each of its responses to the preceding paragraphs as if fully set forth herein.

129. Denied.

130. Denied.

131. Admitted that claim 1 of the '009 patent is accurately quoted and speaks for itself.

132-146. Denied.

147. This paragraph purports to "reserve[] the right to assert additional claims of the '009 patent," and therefore no response is required. To the extent a response is required, denied.

148. Denied.

Count V: Infringement of United States Patent No. 9,427,539 by ResMed

149. ResMed incorporates each of its responses to the preceding paragraphs as if fully set forth herein.

150. Denied.

151. Denied.

152. Admitted that claim 1 of the '539 patent is accurately quoted and speaks for itself.

153-166. Denied.

167. This paragraph purports to "reserve[] the right to assert additional claims of the '539 patent," and therefore no response is required. To the extent a response is required, denied.

168. Denied.

Count VI: Infringement of United States Patent No. 9,533,115 by ResMed

169. ResMed incorporates each of its responses to the preceding paragraphs as if fully set forth herein.

170. Denied.

171. Denied.

172. Admitted that claim 1 of the '115 patent is accurately quoted and speaks for itself.

173-185. Denied.

186. This paragraph purports to "reserve[] the right to assert additional claims of the '115 patent," and therefore no response is required. To the extent a response is required, denied.

187. Denied.

Count VII: Infringement of United States Patent No. 10,384,024 by ResMed

188. ResMed incorporates each of its responses to the preceding paragraphs as if fully set forth herein.

189. Denied.

190. Denied.

191. Admitted that claim 1 of the '024 patent is accurately quoted and speaks for itself.

192-205. Denied.

206. This paragraph purports to "reserve[] the right to assert additional claims of the '024 patent," and therefore no response is required. To the extent a response is required, denied.

207. Denied.

JURY DEMANDED

ResMed is not required to provide a response to NYU's jury demand.

PRAYER FOR RELIEF

ResMed denies that NYU is entitled to any relief from ResMed and denies all the allegations contained in Paragraphs (a) through (g) of NYU's Prayer for Relief.

AFFIRMATIVE DEFENSES

ResMed's Affirmative Defenses are listed below, without accepting or shifting the burden of proof as to any defense. ResMed reserves the right to amend its Answer to add additional Affirmative Defenses consistent with the facts discovered in this case.

FIRST AFFIRMATIVE DEFENSE
(Non-Infringement)

ResMed has not infringed and does not infringe, under any theory of infringement any valid, enforceable claim of the patents-in-suit.

SECOND AFFIRMATIVE DEFENSE
(Invalidity)

Each asserted claim of the patents-in-suit is invalid for failure to comply with one or more of the requirements of the United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

THIRD AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE
(Limitation of Damages)

Any claim for damages is limited by 35 U.S.C. § 286 and 35 U.S.C. § 287. Additionally, to the extent NYU accuses products or services that are or were provided by or for the government of the United States of America, such claims are barred pursuant to 28 U.S.C. § 1498(a).

FIFTH AFFIRMATIVE DEFENSE
(Patent Misuse)

One or more or the asserted patents are unenforceable for patent misuse because NYU seeks to extend the terms of the ’539, ’115, and ’024 patents beyond their expiration dates.

SIXTH AFFIRMATIVE DEFENSE
(License and Release)

NYU’s claims are barred to the extent the alleged acts of infringement are expressly or impliedly licensed, or subject to a release.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), ResMed demands a trial by jury for all issues so triable.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Anthony D. Raucci

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Attorneys for Defendant ResMed Inc.

September 30, 2021

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on September 30, 2021, upon the following in the manner indicated:

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/s/ Anthony D. Raucci

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