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11 Attorneys for Plaintiff
12 SEPARATION DESIGN GROUP IP HOLDINGS, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

17 **SEPARATION DESIGN
GROUP IP HOLDINGS, LLC,**

18 Plaintiff,

19 vs.

20 **INOGEN, INC.,**

CASE NO.
COMPLAINT
JURY TRIAL DEMANDED

1 Plaintiff Separation Design Group IP Holdings LLC (“SDGIP”) files this
2 Complaint against Defendant Inogen Inc. (“Inogen” or “Defendant”), alleging as
3 follows:

4 **THE PARTIES**

5 1. SDGIP is a limited liability company organized and existing under the
6 laws of the Commonwealth of Pennsylvania having a principal place of business at
7 931 Rolling Meadows Rd., Waynesburg, PA 15370.

8 2. SDGIP is a wholly owned subsidiary of Separation Design Group,
9 LLC (“SDG”), which is an independent research and product development firm
10 located in Waynesburg, Pennsylvania. SDG operates a 57,000 square foot facility
11 that houses its offices and laboratories for research, development, analytics,
12 prototyping, testing, fabrication, assembly, and production. SDG’s focus is on
13 developing technologies that enable efficient use of energy and energy resources,
14 including gas separation, heat pumps, thermal power conversion engines, and the
15 monitoring and reducing the environmental effects of mining. SDG has
16 implemented its gas separation technology in medical applications for wound care
17 and respiratory oxygen, as well as in various non-medical applications. SDG was a
18 recipient of the Tibbetts Innovative Small Businesses Award in 2012, one of only
19 18 companies recognized by the U.S. Small Business Association that year based
20 on the economic impact of their technological innovation, and the extent to which
21 that innovation served federal R&D needs, encouraged diverse participation, and
22 increased the commercialization of federal research.

23 3. Upon information and belief Inogen is a corporation organized and
24 existing under the laws of the State of Delaware having a principal place of
25 business at 326 Bollay Dr., Goleta, CA 93117. Inogen may be served with process
26 through its registered agent Alison Bauerlein, 326 Bollay Drive, Goleta, CA
27 93117.

1 4. Inogen is a medical technology company that develops and
2 manufactures portable oxygen concentrators to deliver supplemental long-term
3 oxygen therapy to patients suffering from chronic respiratory conditions. Inogen
4 markets its products to patients, physicians and other clinicians, and third-party
5 payors in the United States and internationally.

JURISDICTION AND VENUE

7 5. This is an action alleging multiple causes of action, including patent
8 infringement under 35 U.S.C. §§ 271, *et seq.*, misappropriation of trade secrets
9 under California Civil Code § 3426, and breach of contract.

10 6. This Court has jurisdiction to hear these matters. This Court has
11 exclusive subject matter jurisdiction over patent infringement actions under Title
12 28 U.S.C. § 1331 and § 1338(a). This Court has supplemental jurisdiction over
13 non-patent claims pursuant to 28 U.S.C. § 1337 and also pursuant to 28 U.S.C. §
14 1332(a) because the parties are citizens of different states and the amount in
15 controversy exceeds \$75,000.

16 7. Inogen is subject to personal jurisdiction by this Court. Inogen has
17 substantial, continuing, and on-going contacts with the State of California such that
18 suit within California is fair and reasonable. Inogen has purposefully availed itself
19 of the protections and laws of the State of California in a continuous, systematic,
20 and substantial fashion, including maintaining its principal place of business and
21 regularly transacting business within the Central District of California, including
22 the alleged acts which give rise to SDGIP's causes of action. As a result, Inogen
23 either knew or should have known that it could be haled into court in California
24 and this District as a foreseeable consequence of its actions as described more fully
25 herein

26 8. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c)
27 and 28 U.S.C. § 1400(b), because Inogen maintains its principal place of business
28 and regularly transacts business within this District, including making, using,

1 and/or selling the Inogen One G3 within this District, and because the alleged acts
2 of infringement, trade secret misappropriation, and breach of contract have
3 occurred in this District.

4 9. Personal jurisdiction and venue in the State of California and this
5 District are further proper pursuant to paragraph 9 of the Mutual Nondisclosure
6 Agreement forming the basis of the breach of contract cause of action and
7 discussed in detail herein, which states: "The federal and state courts within the
8 State of California shall have exclusive jurisdiction to adjudicate any dispute
9 arising out of this agreement."

10 **BACKGROUND FACTS**

11 10. Oxygen concentrators are devices which make oxygen directly from
12 the air. This is accomplished by utilizing a molecular sieve to separate out the
13 atmospheric nitrogen from the air, leaving oxygen as the primary remaining gas to
14 be delivered to the patient.

15 11. Oxygen concentrators were developed as an alternative to liquid or
16 compressed oxygen cylinders used to deliver therapeutic oxygen, and are often
17 preferred because they are lighter weight, more portable, and do not require a
18 frequent resupply of cylinders to be delivered to the patient.

19 12. At least as early as 2009, SDG developed a portable oxygen
20 concentrator which included improvements to various technologies and features
21 over then existing oxygen concentrators.

22 13. SDG caused to be filed U.S. Provisional Patent Application No.
23 61/248,712 on October 5, 2009 and U.S. Provisional Patent Application No.
24 61/264,069 on November 24, 2009 ("2009 Provisional Applications"), which are
25 directed to SDGIP's and SDG's portable oxygen concentrator and related methods.

26 14. In or around early 2010, SDG manufactured a prototype of its portable
27 oxygen concentrator identified as the Revolution ("Revolution").

1 15. In August 2010, at the request of a third party corporation which had
2 sold other patent properties to Inogen, SDG approached Inogen regarding the
3 Revolution and its related portable oxygen concentrator technology.

4 16. On September 21, 2010, SDG and Inogen entered into a Mutual
5 Nondisclosure Agreement (“MNDA”) to explore a business opportunity, wherein
6 SDG agreed to disclose its “Confidential Information” as defined therein and
7 Inogen agreed to preserve the secrecy of SDG’s Confidential Information. SDG’s
8 “Confidential Information” includes proprietary and confidential information and
9 trade secrets related to SDG’s portable oxygen concentrator technology, including,
10 but not limited to, information, technical data, and know-how relating to the
11 Revolution, features, components, and controls included within the Revolution,
12 testing data, the patent applications that eventually resulted in the ’751 Patent, and
13 related technology. A true and correct copy of the MNDA is attached to this
14 Complaint as Exhibit A.

15 17. On September 30, 2010, representatives of Inogen, including Brenton
16 Taylor, Inogen’s Vice-President of Engineering, Peter Hansen, Inogen’s chief
17 design engineer, and Scott Wilkinson, Inogen’s Vice-President of Sales and
18 Marketing, traveled to a meeting at SDG’s facility in Waynesburg, Pennsylvania
19 (“September 30 Meeting”). The purpose of the meeting was for Inogen to review
20 SDG’s Confidential Information relating to its portable oxygen concentrator
21 technology.

22 18. On October 5, 2010, SDG caused to be filed U.S. Patent Application
23 No. 13/499,943 (“943 Patent Application”), which is a non-provisional application
24 claiming priority to the 2009 Provisional Applications.

25 19. In or around October 2010, SDG and Inogen discussed potential
26 business arrangements between the two companies related to SDG’s portable
27 oxygen concentrator technology, but the discussions did not lead to an agreement.
28

1 20. In or around January 2011, upon information and belief, Inogen began
2 formal development of the Inogen One G3 Oxygen Concentrator (“Inogen One
3 G3”). This was done approximately three months after Inogen’s review of SDG’s
4 Confidential Information relating to its portable oxygen concentrator technology
5 and without the knowledge of SDG.

6 21. On April 22, 2011, Inogen caused to be filed U.S. Patent Application
7 No. 13/066,716, which was published as U.S. Patent Application Publication No.
8 2012/0266883 on October 25, 2012 (“Inogen Patent Application”). A true and
9 correct copy of the Inogen Patent Application is attached to this Complaint as
10 Exhibit B. Certain of the named inventors, including Mr. Taylor and Mr. Hansen,
11 were representatives of Inogen who met with SDG on September 30, 2010.

12 22. Based upon information and belief, the Inogen Patent Application
13 incorporates numerous features of SDG’s portable oxygen concentrator technology
14 that was part of SDG’s Confidential Information disclosed to Inogen under the
15 MNDA at the September 30 Meeting in violation of the MNDA. The publication
16 of the Inogen Patent Application publicly disclosed some of SDG’s Confidential
17 Information related to its portable oxygen concentrator technology in violation of
18 the MNDA.

19 23. Based upon information and belief, Inogen publicly released the
20 Inogen One G3 on or about November 8, 2012. The release of the Inogen One G3
21 publicly disclosed some of SDG’s Confidential Information related to its portable
22 oxygen concentrator technology in violation of the MNDA.

23 24. On November 25, 2014, SDG’s ’943 Patent Application was duly and
24 legally issued as United States Patent No. 8,894,751 (“’751 Patent” or the “Patent-
25 in-Suit”), entitled “Ultra Rapid Cycle Portable Oxygen Concentrator.” A true and
26 correct copy of the ’751 Patent is attached hereto as Exhibit C.

27 25. SDGIP is the assignee of all right, title and interest in and to the ’751
28 Patent and all of SDG’s intellectual property related to SDG’s portable oxygen

1 concentrator technology, including all Confidential Information related thereto,
2 and of all rights, remedies, obligations and liabilities to the MNDA. SDGIP
3 possesses all rights of recovery under the '751 Patent, the Confidential Information
4 relating to SDG's portable oxygen concentrator technology, and the MNDA,
5 including the right to sue for past infringement, misappropriation, copying, theft,
6 conversion, or breach, and recourse for damages.

7 26. Inogen is engaged in making, using, selling, offering to sell, and/or
8 importing portable oxygen concentrators, which are covered by one or more of the
9 claims of the '751 Patent, including but not limited to the Inogen One G3.

10 27. Upon information and belief, Inogen manufactures the Inogen One G3
11 Oxygen Concentrator within the United States and markets the Inogen One G3s in
12 the United States and internationally.

13 28. Upon information and belief, Inogen offers to sell, sells, provides,
14 supplies, distributes, leases, and/or rents the Inogen One G3 directly to the public,
15 as well as to resellers which in turn sell the Inogen One G3 to the public.

16 29. Upon information and belief, Inogen also offers to sell, sells, provides,
17 supplies, distributes, leases, and/or rents the Inogen One G3 to other business,
18 which are branded as private label products for sale to the public, including but not
19 limited to Applied Home Healthcare Equipment LLC's OxyGo Series Portable
20 Concentrator.

21 30. Inogen has not sought, nor obtained, a license under the '751 Patent or
22 to SDG's Confidential Information, and is not authorized or permitted to market,
23 manufacture, make, use, sell, offer to sell, provide, supply, distribute, lease, and/or
24 rent any products embodying the invention disclosed and claimed in the '751
25 Patent or the information disclosed in SDG's Confidential Information.

26 31. SDG and SDGIP collectively have invested a substantial amount of
27 time, money, personnel, engineering, testing, and marketing to create SDG's
28

1 Confidential Information, including the proprietary and confidential information
2 and trade secrets related to SDG's portable oxygen concentrator technology.

3 32. Inogen's conduct has caused harm directly to SDG and SDGIP, and
4 the ability to market, sell and license the Revolution and related portable oxygen
5 concentrator technology.

COUNT II

INFRINGEMENT OF THE '751 PATENT

8 33. SDGIP repeats and realleges paragraphs 1 through 32 of this
9 Complaint, as though fully set forth herein.

10 34. SDGIP is the owner of all right, title, and interest of the '751 Patent,
11 including all rights to enforce and prosecute actions for infringement of the '751
12 Patent and to collect damages for all relevant times against infringers of the '751
13 Patent. Accordingly, SDGIP possesses the exclusive right and standing to
14 prosecute the present action for infringement of the '751 Patent by Inogen.

15 35. Upon information and belief, Inogen is liable under 35 U.S.C. §271(a)
16 for direct infringement of the '751 Patent, either literally or under the doctrine of
17 equivalents, because it manufactures, makes, has made, uses, sells, offers for sale,
18 and/or imports products and/or systems that practice one or more claims of the
19 '751 Patent.

20 36. More specifically, Inogen infringes at least claim 22 of the '751 Patent
21 because it manufactures, makes, has made, uses, sells, offers for sale, and/or
22 imports portable oxygen concentrators, including at least the Inogen One G3.

23 37. SDGIP has been damaged as a result of Inogen's infringing conduct.
24 Inogen is, thus, liable to SDGIP in an amount that adequately compensates SDGIP
25 for its infringement, which by law in not event can be less than a reasonable
26 royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §
27 284.

1 38. Upon information and belief, Inogen has had actual notice of its
2 infringement since it began, having been aware of the 2009 Provisional
3 Applications and the '943 Patent Application, and the '751 Patent resulting
4 therefrom, since viewing the disclosed materials under the MNDA, and having full
5 knowledge the technology disclosed therein. Therefore, the entirety of Inogen's
6 infringement is knowing and willful.

7 39. As a result of Inogen's knowing and willful infringement of the '751
8 Patent, SDGIP is entitled to increased damages as permitted by 35 U.S.C. § 284.

9 40. SDGIP has been irreparably damaged as a consequence of Inogen's
10 infringement, for which there is no adequate remedy at law, and such damage will
11 continue without the issuance of an injunction by this Court.

COUNT II

MISAPPROPRIATION OF TRADE SECRETS

14 41. SDGIP repeats and realleges paragraphs 1 through 40 of this
15 Complaint, as though fully set forth herein.

16 42. SDG held valid and protectable trade secrets relating to its portable
17 oxygen concentrator technology.

18 43. SDGIP is the owner via assignment of all right, title, and interest to
19 SDG's trade secrets, including all rights to enforce and prosecute actions for past,
20 present and future misappropriation, copying, theft, and conversion and to collect
21 damages for all relevant times. Accordingly, SDGIP possesses the exclusive right
22 and standing to prosecute the present action for misappropriation of its trade
23 secrets by Inogen.

24 44. SDGIP and its parent SDG took all reasonable steps to maintain the
25 secrecy of its trade secrets, including only disclosing its trade secrets under the
26 protections of a non-disclosure agreement.

27 45. Inogen was permitted access to and obtained these trade secrets during
28 the September 30 Meeting pursuant to the executed MNDA.

1 46. Inogen knew or had reason to know that it originally obtained access
2 to SDG and SDGIP's trade secrets under circumstances giving rise to a duty to
3 maintain its secrecy.

4 47. Upon information and belief, Inogen has utilized and continues to
5 utilize SDG and SDGIP's trade secrets to manufacture and sell the Inogen One G3.

6 48. Upon information and belief, Inogen has disclosed publicly at least
7 portions of SDG and SDGIP's trade secrets through publication of the Inogen
8 Patent Application and the public release of the Inogen One G3.

9 49. Upon information and belief, Inogen may be making other products
10 using SDG and SDGIP's trade secrets, including its next generation portable
11 oxygen concentrators.

12 50. All of Inogen's use of SDG and SDGIP's valuable trade secrets is
13 unauthorized, without express or implied consent from SDG or SDGIP, and
14 constitutes an improper misappropriation of the trade secrets pursuant to Cal. Civil
15 Code §§ 3426 *et seq.*

16 51. SDG and SDGIP's trade secrets derive independent economic value,
17 actual or potential, from not being generally known to the public, or to other
18 entities and persons, who can obtain value from their disclosure or use. These trade
19 secrets provide SDG and SDGIP with competitive advantages over those who do
20 not know them. Disclosure or use of SDG and SDGIP's business and technical
21 secrets would result in unjust commercialization of SDG's research, development,
22 and designs. SDGIP and SDG have been harmed by Inogen's action in that SDG
23 and SDGIP have lost the opportunity to the license and/or otherwise commercially
24 exploit the SDGIP's valuable trade secrets that they would have had absent
25 Inogen's misappropriation. As such, SDGIP is entitled to compensation.

26 52. As a direct and proximate consequence of Inogen's conduct, Inogen
27 has caused, and is causing, and unless such conduct is enjoined by the Court, will
28 cause irreparable harm to SDG and SDGIP for which there is no adequate remedy

1 at law. Therefore, SDGIP seeks the award of a permanent injunction against
 2 Inogen, pursuant to Cal. Civil Code § 3426.2, prohibiting any and all further uses
 3 of the trade secrets at issue, requiring the return of any and all materials
 4 misappropriated from SDG and SDGIP relating to the trade secrets, and to stop all
 5 activities arising from Inogen's misappropriation of SDGIP's trade secrets.

6 53. On information and belief, Inogen's misappropriation of SDG and
 7 SDGIP's trade secrets was willful, intentional, and malicious, entitling SDGIP to
 8 an award of punitive and exemplary damages in an amount not exceeding twice the
 9 damages awarded by the court pursuant to Cal. Civil Code §3426.3(c), and to an
 10 award of attorneys' fees pursuant to Cal. Civil Code §3426.4.

11 **COUNT III**

12 **BREACH OF CONTRACT**

13 54. SDGIP repeats and realleges paragraphs 1 through 53 of this
 14 Complaint, as though fully set forth herein.

15 55. The MNDA was executed by the SDG and Inogen on September 21,
 16 2010, and is a valid, enforceable contract. The MNDA has a term of seven years
 17 from the date of execution and remains valid and enforceable. Inogen's conduct as
 18 described herein constitutes a breach of the provisions of the MNDA.

19 56. In addition to the trade secrets, SDG's Confidential Information
 20 includes other confidential and proprietary information relating to its portable
 21 oxygen concentrator technology ("Non-Trade Secret Confidential Information").

22 57. SDGIP is the owner via assignment of all rights, remedies, obligations
 23 and liabilities to the MNDA and to all right, title, and interest to SDG's Non-Trade
 24 Secret Confidential Information relating to its portable oxygen concentrator
 25 technology, including all rights to enforce, prosecute actions, and collect damages
 26 for any past, present and future breach of the MNDA and for any misappropriation,
 27 copying, theft, or conversion of SDG's Non-Trade Secret Confidential
 28 Information. Accordingly, SDGIP possesses the exclusive right and standing to

1 prosecute the present action for breach of the MNDA by Inogen resulting from its
2 misappropriation, copying, theft, and conversion of SDG's Non-Trade Secret
3 Confidential Information.

4 58. SDGIP and its parent SDG performed any and all terms, conditions,
5 promises, and obligations required by the MNDA.

6 59. Inogen was permitted access to and obtained SDGIP's Non-Trade
7 Secret Confidential Information during the September 30 Meeting pursuant to the
8 executed MNDA.

9 60. SDGIP and its parent SDG took all reasonable steps to maintain the
10 secrecy of the Non-Trade Secret Confidential Information, including only
11 disclosing the Non-Trade Secret Confidential Information under the protections of
12 a non-disclosure agreement.

13 61. Upon information and belief, Inogen has breached the MNDA through
14 the use and continued use of SDG and SDGIP's Non-Trade Secret Confidential
15 Information to manufacture and sell the Inogen One G3.

16 62. Upon information and belief, Inogen has breached the MNDA by
17 disclosing publicly SDGIP's valuable Non-Trade Secret Confidential Information
18 through publication of the Inogen Patent Application and the public release of the
19 Inogen One G3.

20 63. Upon information and belief, Inogen has breached the MNDA by
21 attempting to obtain United States patents that include within their claims SDGIP's
22 Non-Trade Secret Confidential Information.

23 64. Upon information and belief, Inogen may be making other products
24 using SDG and SDGIP's Non-Trade Secret Confidential Information, including its
25 next generation portable oxygen concentrators.

26 65. All of Inogen's use of SDG and SDGIP's valuable Non-Trade Secret
27 Confidential Information is unauthorized and improper.

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1 66. As a result of Inogen's conduct, SDGIP has been damaged in an
2 amount beyond the jurisdictional minimum of this Court and is entitled to
3 compensation.

4 67. As a direct and proximate consequence of Inogen’s conduct, Inogen
5 has caused, and is causing, and unless such conduct is enjoined by the Court, will
6 cause irreparable harm to SDG and SDGIP for which there is no adequate remedy
7 at law. Therefore, SDGIP seeks the award of a permanent injunction against
8 Inogen, pursuant to Cal. Civil Code §§ 3420 - 3424 and paragraph 10 of the
9 MNDA, prohibiting any and all further uses of the Non-Trade Secret Confidential
10 Information at issue to stop all activities resulting in Inogen’s breach of contract.

JURY DEMAND

12 SDGIP hereby requests a trial by jury pursuant to Rule 38 of the Federal
13 Rules of Civil Procedure.

PRAYER FOR RELIEF

15 SDGIP requests that the Court find in its favor and against Inogen, and that
16 the Court grant SDGIP the following relief:

- 17 a. Judgment that one or more claims of the '751 Patent have been
18 infringed, either literally and/or under the doctrine of equivalents, by
19 Inogen;
- 20 b. Judgment that Inogen account for and pay to SDGIP all damages to
21 and costs incurred by SDGIP because of Inogen's infringing activities
22 and other conduct complained of herein;
- 23 c. Judgement that Inogen's infringement is willful from the time Inogen
24 became aware of the infringing nature of its products and methods and
25 that the Court award treble damages for the period of such willful
26 infringement pursuant to 35 U.S.C. § 284;
- 27 d. Judgment that Inogen's conduct complained of herein constitutes
28 misappropriation of the trade secrets of SDGIP and its parent SDG;

- 1 e. Judgment that as a result of Inogen misappropriation, SDGIP be
2 granted compensatory damages corresponding to the entire life cycle
3 of the Inogen One G3 and all other Inogen products which use one or
4 more of SDG and SDGIP's trade secrets;
- 5 f. Judgement that Inogen's misappropriation of SDGIP and SDG's trade
6 secrets is willful, intentional, and malicious, and that the Court award
7 order Inogen to pay an award of damages in an amount not exceeding
8 twice the damages awarded by the Court pursuant to Cal. Civil Code §
9 3426.3(c);
- 10 g. Judgment that Inogen's conduct complained of herein constitutes
11 breach of the MNDA;
- 12 h. Judgment that as a result of Inogen's breach of the MNDA, SDGIP be
13 awarded actual damages associated with Inogen's breach;
- 14 i. That SDGIP be granted pre-judgment and post-judgment interest on
15 the damages caused to it by reason of Inogen's infringing activities
16 and other conduct complained of herein;
- 17 j. That this Court award SDGIP its reasonable attorney's fees and costs
18 in accordance with 35 U.S.C. § 285, Cal. Civil Code §3426.4, and/or
19 any other basis provided for under federal or California law;
- 20 l. That Inogen, its officers, agents, servants and employees, and those
21 persons in active concert and participation with any of them, be
22 permanently enjoined from infringement of one or more claims of the
23 '751 Patent, misappropriation of SDGIP's trade secrets, and breach of
24 the MNDA by the acts complained of herein. In the alternative, if the
25 Court finds that an injunction is not warranted, SDGIP requests an
26 award of post judgment royalty to compensate for future
27 infringement; and

1 m. That SDGIP be granted such other and further relief as the Court may
2 deem just and proper under the circumstances.
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1 DATED: October 23, 2015.

/s/ Brandon C. Fernald

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