

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Tempur Sealy International, Inc.
Petitioner,

v.

Select Comfort Corporation
Patent Owner

Patent No. 5,904,172 (Claims 2-3, 6, 9, 12-13, 16, 20-25)

Issued: May 18, 1999

Filed: July 28, 1997

Inventors: James Edwin Giff et al.

Title: VALVE ENCLOSURE ASSEMBLY

Inter Partes Review No. 2014-01419

PETITION FOR INTER PARTES REVIEW

TABLE OF CONTENTS

I. Compliance with Requirements of an *Inter Partes* Review Petition 1

A. Certification that the Patent May Be Contested via *Inter Partes* Review by the Petitioner (37 CFR §§ 42.101 and 42.104)..... 1

B. Fee for *Inter Partes* Review (37 CFR § 42.15(a)) 1

C. Mandatory Notices (37 CFR § 42.8(b)) 1

 1. Real Party in Interest (37 CFR § 42.8(b)(1)) 1

 2. Other Proceedings (37 CFR § 42.8(b)(2)) 1

 3. Lead and Backup Lead Counsel (37 CFR § 42.8(b)(3))..... 2

 4. Service Information (37 CFR § 42.8(b)(4))..... 3

D. Proof of Service (37 CFR §§ 42.6(e) and 42.105(a)) 3

II. Identification of Claims Being Challenged (37 CFR § 42.104(b))..... 3

III. Relevant Information Concerning the Contested Patent..... 4

A. Person of Ordinary Skill in the Art 4

B. Construction of Terms Used in the Claims 5

 1. General Observations 5

 2. Specific Claim Constructions..... 8

C. The Background of the ‘172 Patent is Admitted Prior Art..... 10

IV. Precise Reasons for Relief Requested..... 11

A. Claims 6, 16 and 20-21 are obvious under Kery further in view of Guthrie 12

 1. Claim 16 is obvious under Kery further in view of Guthrie..... 12

2.	Claims 20-21 are obvious under Kery further in view of Guthrie.....	15
3.	Claim 6 is obvious under Kery further in view of Guthrie.....	19
B.	Claims 2-3, 12-13 and 22-25 are obvious under Kery, further in view of Moulton and Guthrie	22
1.	Claims 2-3 and 22-25 are obvious under Kery further in view of Moulton and Guthrie.....	22
2.	Claims 12-13 are obvious under Kery further in view of Moulton and Guthrie	27
C.	Claim 9 is anticipated by Kery	31
D.	Claim 9 is obvious under Kery in view of Guthrie.....	35
V.	CONCLUSION	39

Attachment A. Proof of Service of the Petition

Attachment B. List of Evidence and Exhibits Relied Upon in Petition

I. Compliance with Requirements of an *Inter Partes* Review Petition

A. Certification that the Patent May Be Contested via *Inter Partes* Review by the Petitioner (37 CFR §§ 42.101 and 42.104)

Petitioner certifies that U.S. Patent No. 5,904,172 (“the ‘172 patent”, [Ex. 1001]) is available for review and that Petitioner is not barred or estopped from requesting *inter partes* review of any of the claims of the ‘172 patent. Neither Petitioner nor any privy of Petitioner: (a) has filed a civil action challenging the validity of any of the claims of the ‘172 patent; (b) has been served a complaint alleging infringement of the ‘172 patent more than a year prior to the present date; or (c) is estopped from challenging any of the claims of the ‘172 patent.

B. Fee for *Inter Partes* Review (37 CFR § 42.15(a))

The Director is authorized to charge the fee specified by 37 CFR § 42.15(a) to Deposit Account No. 50-2775, which fee is believed to be \$23,000. Any necessary additional fees may be charged to Deposit Account No. 50-2775.

C. Mandatory Notices (37 CFR § 42.8(b))

1. Real Party in Interest (37 CFR § 42.8(b)(1))

The real party in interest of this petition is *Tempur Sealy International Inc.* having an address of 1000 Tempur Way, Lexington, Kentucky 40511, United States. No other entity is a real party in interest or a privy for purposes of this petition.

2. Other Proceedings (37 CFR § 42.8(b)(2))

The '172 patent has been asserted in the United States District Court for the District of Minnesota (the "co-pending litigation") as shown below:

- *Select Comfort Corporation v. Tempur Sealy International, Inc. d/b/a/ Tempur-Pedic* (Civil Action No. 0:14-cv-00245-JNE-JSM)
 - Summons served on Tempur Sealy International, Inc. on February 7, 2014. [Ex. 1012]

In addition, the '172 patent has also been asserted in the United States District Court for the District of Minnesota in the following cases, which are now closed:

- *Select Comfort Corporation v. The Sleep Better Store, LLC* (Civil Action No. 0:12-cv-1148).
- *Select Comfort Corporation v. Halcyon Waterspring* (Civil Action No. 0:03-cv-3325).

An *Ex Parte* Reexamination (Serial No. 90/012,456) of claims 1, 2, 4-6, 9-12, and 14-18 of the '172 patent was filed on October 17, 2012. The USPTO granted the Request for Reexamination on November 19, 2012. An *Ex Parte* Reexamination Certificate issued on January 3, 2014.

3. Lead and Backup Lead Counsel (37 CFR § 42.8(b)(3))

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.