

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

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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))

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