

# EXHIBIT W

Patent Owner's Response and Notice of Supplemental  
Evidence in Response to Petitioner's Objections to Patent  
Owner's Evidence Dated October 30, 2019

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1 UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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3 )  
4 Select Comfort Corporation and ) File No. 12-CV-2899  
Select Comfort SC Corporation, ) (DWF/SER)  
5 )  
Plaintiffs/Counter-Defendants, )  
6 vs. ) St. Paul, Minnesota  
7 John Baxter; Dires, LLC d/b/a ) September 28, 2017  
Personal Touch Beds and Personal ) 9:00 a.m.  
Comfort Beds; Digi Craft Agency, )  
8 LLC; Direct Commerce, LLC d/b/a )  
9 Personal Touch Beds; Scott )  
Stenzel; and Craig Miller, )  
10 Defendants/Counter-Claim ants. )  
11 -----

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13  
14 BEFORE THE HONORABLE DONOVAN W. FRANK and a Jury  
15 UNITED STATES DISTRICT COURT JUDGE

16  
17 **(TRIAL - VOLUME V)**

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23  
24 Proceedings recorded by mechanical stenography;  
25 transcript produced by computer.

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1 APPEARANCES

2 For the Plaintiffs: Fox Rothschild, LLP  
ANDREW S. HANSEN, ESQ.  
3 DENNIS E. HANSEN, ESQ.  
ELIZABETH A. PATTON, ESQ.  
4 Suite 2000  
222 South Ninth Street  
5 Minneapolis, Minnesota 55402

6 For Defendants Dires, Madel, PA  
Digi Craft Agency, CHRISTOPHER W. MADEL, ESQ.  
7 Direct Commerce, Scott JENNIFER M. ROBBINS, ESQ.  
Stenzel, and Craig CASSANDRA B. MERRICK, ESQ.  
8 Miller: Suite 700  
800 Hennepin Avenue  
9 Minneapolis, Minnesota 55403

10 For Defendant John Berens & Miller, PA  
Baxter: BARBARA P. BERENS, ESQ.  
11 CARRIE L. ZOCHERT, ESQ.  
Suite 3720  
12 80 South Eighth Street  
Minneapolis, Minnesota 55402

13 Court Reporters: CARLA R. BEBAULT, RMR, CRR, FCRR  
14 Suite 146  
316 North Robert Street  
15 St. Paul, Minnesota 55101

16 KRISTINE MOUSSEAU, RPR-CRR  
17 Suite 1005  
300 South Fourth Street  
18 Minneapolis, Minnesota 55415

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1 **PROCEEDINGS**

2 **IN OPEN COURT**

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4 THE COURT: You may all be seated. Thank you.  
5 Mr. Baxter, I will just remind you, I won't  
6 re-administer the oath. You remain under oath from when I  
7 administered that to you.  
8 So whenever you're ready, counsel, we may  
9 continue.  
10 MR. ANDREW HANSEN: Thank you, your Honor. Good  
11 morning.  
12 THE COURT: Good morning.

13 **DIRECT EXAMINATION**

14 **BY MR. ANDREW HANSEN: (continued)**

15 **Q.** Good morning, Mr. Baxter.  
16 **A.** Good morning.  
17 MR. ANDREW HANSEN: Dorian, could you put  
18 Plaintiffs' 135 up? And could you zoom in on the second ad?  
19 BY MR. ANDREW HANSEN:  
20 **Q.** Mr. Baxter, this ad was pulled from a screen grab about  
21 three months after your time at Personal Comfort ended. My  
22 question is, is that similar to ads you ran while at  
23 Personal Comfort?  
24 **A.** Yes.  
25 **Q.** And can you open up to Plaintiffs' 990, that's the large

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1 Exhibit. I think it's right here?  
2 MR. ANDREW HANSEN: Your Honor, may I approach?  
3 THE COURT: You may.  
4 BY MR. ANDREW HANSEN:  
5 **Q.** Open up to page 410 of 990. And if you go 22 lines  
6 down, hopefully Dorian can get it highlighted here. Do you  
7 see that where she's highlighting?  
8 **A.** Yes.  
9 MR. ANDREW HANSEN: And, Dorian, can you bring  
10 that up just above?  
11 BY MR. ANDREW HANSEN:  
12 **Q.** And, Mr. Baxter, on 990, if you look at this ad that's  
13 above that was actually on the Internet and then look at  
14 990, does 990, the spreadsheet, reflect the text that we see  
15 in that ad?  
16 **A.** Yes.  
17 **Q.** And so where it says "Sleep 55 off Number Beds" in the  
18 spreadsheet, that's that blue "Sleep 55 percent off Number  
19 Beds" in the ad text, right?  
20 **A.** Correct.  
21 **Q.** And then the Online Edition bed sale, which is the  
22 description line 1, that's at the bottom?  
23 **A.** Correct.

<p style="text-align: right;">1087</p> <p>1 <b>Q.</b> Now a lot of those questions were about false 2 advertising, right? 3 <b>A.</b> Yes. 4 <b>Q.</b> How many times has the Federal Trade Commission 5 contacted you regarding false advertising? 6 <b>A.</b> Zero. 7 <b>Q.</b> How many times has the Federal Consumer Protection 8 Finance Bureau contacted you regarding false advertising? 9 <b>A.</b> Zero. 10 <b>Q.</b> Your business was located in Florida; is that right? 11 <b>A.</b> Yes. 12 <b>Q.</b> Orlando? 13 <b>A.</b> Yes, at the time. 14 <b>Q.</b> How many times has the Florida Attorney General 15 contacted you regarding false advertising? 16 <b>A.</b> Never. 17 <b>Q.</b> How about the Florida Department of Commerce? 18 <b>A.</b> Never. 19 <b>Q.</b> Let's keep going further down. Orlando is in Orange 20 County, Florida I believe, right? 21 <b>A.</b> Yes. 22 <b>Q.</b> How many times has the Orange County District Attorney 23 contacted you regarding false advertising? 24 <b>A.</b> Zero. 25 <b>Q.</b> Anybody at the county level ever contact you for false</p>	<p style="text-align: right;">1088</p> <p>1 advertising? 2 <b>A.</b> No. 3 <b>Q.</b> Let's go down to the City of Orlando. Has the City 4 Attorney ever contacted you regarding false advertising? 5 <b>A.</b> No. 6 <b>Q.</b> Has the dog catcher from Orlando contacted you regarding 7 false advertising? 8 <b>A.</b> No. 9 MR. ANDREW HANSEN: Objection to the question. 10 THE COURT: I'll sustain that. It's irrelevant. 11 BY MR. MADEL: 12 <b>Q.</b> How many consumers have brought a class action against 13 you for false advertising in your life? 14 <b>A.</b> Zero. 15 <b>Q.</b> How many consumers have alleged fraud against you? 16 <b>A.</b> Zero. 17 <b>Q.</b> How many consumers have sued you for false advertising? 18 <b>A.</b> Zero. 19 <b>Q.</b> Deceptive trade practices? 20 <b>A.</b> No one. 21 <b>Q.</b> How many people in your life have contended that you 22 engaged in false advertising against consumers? 23 <b>A.</b> One.</p>
<p style="text-align: right;">1089</p> <p>1 <b>Q.</b> Whatever you call them, right? 2 <b>A.</b> Yeah. 3 MR. MADEL: I have no further questions. 4 THE COURT: Additional, if you wish, counsel? 5 <b>REDIRECT EXAMINATION</b> 6 <b>BY MR. ANDREW HANSEN:</b> 7 <b>Q.</b> Mr. Baxter, a moment ago you were talking about the 8 e-mail that said tricky marketing, right? Do you remember 9 that? 10 <b>A.</b> Yes. 11 <b>Q.</b> And you said that you were referring to the click to 12 call -- 13 <b>A.</b> Yes. 14 <b>Q.</b> -- right? 15 And that it was -- nobody had a name for it, 16 right? 17 <b>A.</b> Yes. 18 <b>Q.</b> And didn't Google have a name for it? Google called it 19 click to call, right? 20 <b>A.</b> I don't think so at that time, no. 21 <b>Q.</b> Did they call it call extension? 22 <b>A.</b> Maybe something like that. 23 <b>Q.</b> But they didn't call it tricky marketing, did they, to 24 your knowledge? 25 <b>A.</b> No.</p>	<p style="text-align: right;">1090</p> <p>1 MR. ANDREW HANSEN: No more questions. 2 THE COURT: Any additional examination? 3 MS. BERENS: No, your Honor. Thank you. 4 MR. MADEL: No, your Honor. Thank you. 5 THE COURT: Call your next witness. 6 MR. DENNIS HANSEN: Your Honor, our paralegal went 7 to grab our next witness David Karr. In the meantime, 8 permission to approach and hand your Honor a binder. 9 THE COURT: Yep. 10 MR. DENNIS HANSEN: Your Honor, Plaintiffs call 11 David Karr. 12 THE COURT: If you want to step forward, sir. And 13 then before you step in to the witness stand, if you would 14 raise your right hand, please. 15 Do you swear to tell the truth, the whole truth 16 and nothing but the truth, so help you God? 17 MR. KARR: I do. 18 THE COURT: And there's a couple steps up there 19 but you can step into the witness box and have a seat, 20 please. And then as I tell every witness, whether it's a 21 combination of moving the chair and the microphone, because 22 that's -- you have to sit quite close to it. Otherwise it 23 won't pick you up. If you would state your full name and</p>

1091	<p>1 K-a-r-r.</p> <p>2 THE COURT: You may inquire, counsel.</p> <p>3 MR. DENNIS HANSEN: Thank you, your Honor.</p> <p>4 Permission to approach and hand the witness a binder?</p> <p>5 THE COURT: You may.</p> <p>6 MR. DENNIS HANSEN: Thank you.</p> <p>7 <b>DIRECT EXAMINATION</b></p> <p>8 <b>BY MR. DENNIS HANSEN:</b></p> <p>9 <b>Q.</b> Good afternoon, Mr. Karr.</p> <p>10 <b>A.</b> Good afternoon.</p> <p>11 <b>Q.</b> Where do you live?</p> <p>12 <b>A.</b> I live in Greenville County in South Carolina.</p> <p>13 <b>Q.</b> Can you give the jury a brief summary of your</p> <p>14 educational background?</p> <p>15 <b>A.</b> Yes. I earned a Bachelor of Science degree in</p> <p>16 accounting from Bob Jones University in 1977.</p> <p>17 <b>Q.</b> Where is Bob Jones University?</p> <p>18 <b>A.</b> It's located in Greenville, South Carolina.</p> <p>19 <b>Q.</b> Have you lived in Greenville your entire life?</p> <p>20 <b>A.</b> Not my entire life but since I was six.</p> <p>21 <b>Q.</b> What do you do for a living, Mr. Karr?</p> <p>22 <b>A.</b> I'm the General Manager of Select Comfort SC</p> <p>23 Corporation.</p> <p>24 <b>Q.</b> And what is Select Comfort SC Corporation?</p> <p>25 <b>A.</b> Select Comfort SC Corporation is a wholly-owned</p>	1093	<p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> Can you describe your roles and responsibilities?</p> <p>3 <b>A.</b> Sure. Early on the company was very small and basically</p> <p>4 did about everything. I was responsible for sales and</p> <p>5 marketing, for operations, for supply chain, for legal, for</p> <p>6 finance. And then, of course, the Internet came along and</p> <p>7 then I was also responsible for our Internet relationships,</p> <p>8 whether they be with third-party partners or whether we did</p> <p>9 them in-house.</p> <p>10 <b>Q.</b> You mentioned that you are now the General Manager of</p> <p>11 the Comfortaire business. What are your responsibilities in</p> <p>12 that role?</p> <p>13 <b>A.</b> They are actually very similar. I am responsible for</p> <p>14 sales and marketing, for operations, for supply chain. And</p> <p>15 then I have cross-functional partners at Select Comfort who</p> <p>16 handle human capital, finance, compliance, legal, and brand.</p> <p>17 <b>Q.</b> Let's talk a little bit more about what Comfortaire is.</p> <p>18 What business is Comfortaire in?</p> <p>19 <b>A.</b> Comfortaire is in the adjustable air bed business.</p> <p>20 <b>Q.</b> Please just share with the jury a brief history of</p> <p>21 Comfortaire.</p> <p>22 <b>A.</b> Sure. As I said, Comfortaire has been around since</p> <p>23 1981. I wasn't acquainted with it until 1985. But</p> <p>24 Comfortaire was the first company to introduce an air bed to</p> <p>25 third-party retail and have continuously been a supplier of</p>
1092	<p>1 subsidiary of Select Comfort and it runs the Comfortaire</p> <p>2 business.</p> <p>3 <b>Q.</b> How long -- well, has the Comfortaire business always</p> <p>4 been run by Select Comfort SC Corporation?</p> <p>5 <b>A.</b> No, Comfortaire started in 1981 and for most of its</p> <p>6 existence was actually a competitor to Select Comfort. And</p> <p>7 then in January, I think, of 2013, Select Comfort purchased</p> <p>8 Comfortaire and Comfortaire Direct from their previous</p> <p>9 owners which was Park Place Corporation.</p> <p>10 <b>Q.</b> How long have you worked for Comfortaire, Mr. Karr?</p> <p>11 <b>A.</b> I have been involved with Comfortaire in some capacity</p> <p>12 since 1985.</p> <p>13 <b>Q.</b> Can you tell us about your roles with Comfortaire since</p> <p>14 1985?</p> <p>15 <b>A.</b> Sure. I was introduced to Comfortaire when I joined</p> <p>16 Park Place. My main responsibilities, of course, were to</p> <p>17 Park Place. I came in on the finance side. Park Place had</p> <p>18 a subsidiary called Comfortaire, and I handled the financial</p> <p>19 side of Comfortaire. In 1987 I was made President of</p> <p>20 Comfortaire. I still had my dual roles with Park Place and</p> <p>21 at the acquisition, my titles with Park Place were Chief</p> <p>22 Financial Officer, Chief Operating Officer for Park Place,</p> <p>23 and then the President of Comfortaire.</p>	1094	<p>1 air-supported sleep for third-party retail partners longer</p> <p>2 than anybody else in this category.</p> <p>3 Then, of course, we were acquired by Select</p> <p>4 Comfort in 2013.</p> <p>5 <b>Q.</b> What products did Comfortaire sell before the</p> <p>6 acquisition?</p> <p>7 <b>A.</b> Pre-acquisition -- well, from our inception we have</p> <p>8 created and sold air beds. That's our business.</p> <p>9 <b>Q.</b> And where did Comfortaire sell those air beds?</p> <p>10 <b>A.</b> We sold air beds with third-party retail partners or</p> <p>11 dealers. We have about 200 dealer relationships, about 400</p> <p>12 storefronts in the U.S. And I'll just name a couple. One</p> <p>13 of our larger is Raymour and Flanigan in northeast. That's</p> <p>14 about 100 stores. And then some that might be familiar here</p> <p>15 would be HOM Furniture here in Minneapolis and in the</p> <p>16 Minnesota area.</p> <p>17 <b>Q.</b> How did the acquisition by Select Comfort of Comfortaire</p> <p>18 come about?</p> <p>19 <b>A.</b> Really late in 2012 Select Comfort contacted -- well,</p> <p>20 Park Place about an opportunity, and it was like the perfect</p> <p>21 time and the price was right. And the acquisition occurred</p> <p>22 in January of 2013.</p> <p>23 <b>Q.</b> Why did Park Place sell the Comfortaire business to</p>

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1 THE COURT: All right. So we will stand in  
 2 recess, and I'll just let you indicate to the extent it's  
 3 relevant, unrelated to the issues here, just the way the  
 4 courtroom floor is designed where the jurors come in and  
 5 where we usually get everything going, usually if they have  
 6 complaints or at least everything that Brenda and Becky is  
 7 saying, everybody seems to be in good spirits, so as  
 8 opposed to saying, not that they would confide with us  
 9 everything, and generally we have kind of a good sense if  
 10 they feel --  
 11 They haven't asked Brenda to ask me any questions  
 12 yet, because I would have to forward those on to you, but  
 13 so we have one juror that the young woman sitting in the  
 14 first row there, she is here every morning working at 7:00  
 15 a.m., a little after 7:00, so we have to, for a number of  
 16 reasons, I got in Becky and I showed up about the same time  
 17 about two minutes after 7:00, and she was waiting for us to  
 18 let her in the jury room.  
 19 So we'll stand in recess. You, of course, may  
 20 step down, Mr. Karr, and we will see everybody at nine  
 21 o'clock in the morning. We're in recess. Thank you.  
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 2 (Court adjourned at 5:25 P.M.)  
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 4 \* \* \*  
 5  
 6  
 7 We, Carla R. Bebault and Kristine Mousseau, certify that  
 8 the foregoing is a correct transcript from the record of  
 9 proceedings in the above-entitled matter.  
 10  
 11  
 12 Certified by: s/ Carla R. Bebault  
 Carla R. Bebault, RMR, CRR, FCRR  
 13  
 14 Certified by: s/ Kristine Mousseau, RPR-CRR  
 Kristine Mousseau, RPR-CRR  
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8 **DAVID KARR**

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12 **EXHIBITSREC'D**

13 None

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