

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN NATIONAL MANUFACTURING INC.,

Petitioner,

v.

SELECT COMFORT CORPORATION,

Patent Owner.

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Case No. IPR2019-00514

Patent 5,904,172

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**PATENT OWNER'S MANDATORY NOTICES**

The named patent owner in the above-referenced proceeding, Select Comfort Corporation, is not the patent owner of U.S. Patent No. 5,904,172 (“the ‘172 Patent”). Instead, Sleep Number Corporation is the patent owner (“Patent Owner”). In light of the foregoing, Patent Owner provides these notices without waiving any of Patent Owner’s rights, including but not limited to its right to service of process or to contest personal jurisdiction or standing.

**1. Real Party in Interest (§ 42.8(b)(1)).**

The real parties in interest are SLEEP NUMBER CORPORATION, located at 1001 Third Ave. South Minneapolis, MN 55404; SELECT COMFORT RETAIL CORPORATION, located at 1001 Third Ave. South Minneapolis, MN 55404; SELECT COMFORT SC CORPORATION, located at 1001 Third Ave. South Minneapolis, MN 55404; SELECT COMFORT CANADA HOLDING INC., located at 1001 Third Ave. South Minneapolis, MN 55404; SELECT COMFORT COSC CANADA ULC, located at 3400, 350-7<sup>th</sup> Ave. SW Calgary, Alberta, T2P3N9; and SELECT COMFORT LIMITED, located at 100 New Bridge Street, London, UK EC4V 6JA.

As detailed above, Petitioner improperly named SELECT COMFORT CORPORATION as the patent owner. However, SLEEP NUMBER CORPORATION is the Patent Owner.

**2. Related Matters (§ 42.8(b)(2)).**

**A. Matters Involving Petitioner.**

On December 29, 2017, Patent Owner filed complaints against Petitioner and a related entity in the Northern District of Texas alleging infringement of U.S. Patent No. (“USPN”) 9,737,154 (“the ‘154 Patent” which Petitioner refers to as

“Mahoney”), USPN 8,769,747 (“the ‘747 Patent,” which Petitioner also refers to as “Mahoney”), and USPN 5,904,172 (“the ‘172 Patent,” which Petitioner refers to as “Gifft”): *Sleep Number Corp. v. Am. Nat’l Mfg., Inc.*, No. 3:17-cv-03517-B (N.D. Tex.) and *Sleep Number Corp. v. Sizewise Rentals, LLC*, 3:17-cv-03518-N (N.D. Tex.) (“the Texas Actions”). On February 20, 2018, Patent Owner voluntarily dismissed the Texas Actions and refiled its complaints in the Central District of California: *Sleep Number Corp. v. Am. Nat’l Mfg., Inc.*, No. 5:18-cv-00357-AB SP (C.D. Cal.) and *Sleep Number Corp. v. Sizewise Rentals, LLC*, 5:18-cv-00356-AB SP (C.D. Cal.) (“the California Actions”). The California Actions are currently stayed.

Petitioner has filed IPR Petitions against each of the patents asserted in the Texas and California Actions. On December 21, 2018, Petitioner filed IPR2019-00497 against the ‘747 Patent and IPR2019-00500 against the ‘154 Patent. On December 29, 2018, Petitioner filed IPR2019-00514 against the ‘172 Patent (the instant action).

Previously, Patent Owner filed a complaint against Petitioner and a related entity with the International Trade Commission (“ITC”) on October 16, 2015, where Patent Owner asserted infringement of the ‘172 Patent: *Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same*, ITC Inv. No. 337-TA-971 (USITC Oct. 16, 2015). The ITC ultimately determined that Petitioner and the related entity infringed certain claims of the ‘172 Patent. In addition, Petitioner and a related entity previously filed an antitrust complaint against Patent Owner, in which Petitioner alleged the ‘172 Patent was invalid: *Am. Nat’l Mfg. v. Select*

*Comfort Corp., et al.*, No. 16-cv-00582-GHK-JC (C.D. Cal., filed March 30, 2016).

That complaint was later dismissed.

**B. Other Matters.**

On August 29, 2012, a Reexamination was anonymously requested on the ‘172 Patent, which resulted in the issuance of a Reexamination Certificate on January 3, 2014: Reexamination Control No. 90/012456. In addition, an IPR Petition was previously filed against the ‘172 Patent (IPR2014-01419): *Tempur Sealy Int’l Inc. v. Select Comfort Corp.*, IPR2014-01419 (PTAB, filed August 29, 2014). That IPR Petition was not instituted.

Additionally, the ‘172 Patent was previously involved in the following, now closed, matters: *Select Comfort Corp. v. The Sleep Better Store, LLC*, No. 0:12-cv-1148 (D. Minn., filed May 11, 2012); *Select Comfort Corp. v. Halcyon Waterspring*, No. 0:03:cv-3324 (D. Minn. filed June 3, 2003); and *Select Comfort Corp. v. Tempur Sealy Int’l, Inc. d/b/a Tempur-Pedic*, No. 0:14-cv-00245 (D. Minn. filed Jan. 24, 2014).

**C. Priority.**

The ‘154 and ‘747 Patents and pending Application No. 15/662,623 (the ‘623 App.‘) claim priority to U.S. Patent Application 12/936,084, which was filed October 1, 2010, and which is a National Stage Entry of Application No. PCT/US2008/059409, which was filed on April 4, 2008. The ‘154 Patent and pending ‘623 App. claim priority to Application No. 14/283,675, which was filed on May 21, 2014. The ‘172 Patent claims priority to U.S. Patent Application No. 08/901,144, which was filed on July 28, 1997.

**3. Designation of Lead and Backup Counsel (§ 42.8(b)(3)).**

Lead Counsel	Backup Counsel
Steven A. Moore, (Reg. No. 55,462)  Steve.moore@pillsburylaw.com  Pillsbury Winthrop Shaw Pittman LLP 501 West Broadway, Suite 1100 San Diego, CA 92101 Telephone: (619) 234-5000 Facsimile: (619) 236-1995	Luke Toft (Reg. No. 75,311)  LToft@Foxrothschild.com  Fox Rothschild LLP Campbell Mithun Tower, Suite 2000 222 South Ninth Street Minneapolis, MN 55402 Telephone: (612) 607-7000 Facsimile: (612) 607-7100
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Additional counsel for Patent Owner may seek *pro hac vice* admission for the three IPR Petitions referenced herein.

**4. Service Information.**

Service on Patent Owner may be made by electronic mail to Patent Owner's counsel at the email addresses above. Alternatively, service may be made by mail or hand delivery to: Fox Rothschild LLP, Campbell Mithun Tower, Suite 2000, 222 South Ninth Street, Minneapolis, MN 55402 and Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventh Street, NW, Washington, DC 20036. The fax numbers for lead and backup counsels are reflected above.

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