

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN NATIONAL MANUFACTURING INC.,
Petitioner,

v.

SELECT COMFORT CORPORATION,
Patent Owner.

Case No. IPR2019-00514
Patent No. 5,904,172

**DECLARATION OF LUKAS D. TOFT
IN SUPPORT OF PATENT OWNER'S PRELIMINARY RESPONSE**

I, Luke Toft, declare and state as follows:

1. I am an attorney with the law firm of Fox Rothschild LLP. I represent Patent Owner Sleep Number Corporation in the above referenced proceeding. I submit this Declaration in support of Patent Owner's Preliminary Response. All statements made herein are made of my own personal knowledge to the best of my recollection and, if called to testify, could and would do so.

2. On January 10, 2019, I sent an email to counsel of record for Petitioner American National Manufacturing Co., informing them that Fox Rothschild was in receipt of three IPR Petitions – IPR2019-00497, challenging U.S. Patent No. 8,769,747 (“the ‘747 Patent”), IPR2019-00500, challenging U.S. Patent No. 9,737,154 (“the ‘154 Patent”), and IPR2019-00514, challenging U.S. Patent No. 5,904,172 (“the ‘172 Patent”) – but that, because each Petition named the wrong party as the patent owner, the Petitions were improperly served. Counsel for both parties conducted a telephonic meet and confer on this issue on January 11, 2019, but were unable to resolve the dispute on this issue. Accordingly, also on January 11, I sent a joint email to the Patent Trial and Appeal Board (“Board”) requesting a call for guidance. On March 18, 2019, the Board scheduled a conference call with the parties for March 20, 2019.

3. During the March 20, 2019 conference call with the parties, the Board asked counsel for Petitioner why they did not serve the registered correspondence address of record. Counsel acknowledged that the correspondence address of record was a P.O. Box of Fish & Richardson P.C. but explained that, because FedEx does not deliver to P.O. Boxes, they chose to FedEx the Petitions to another

address of the Minneapolis, MN office of Fish & Richardson P.C. and to the Minneapolis, MN office of Fox Rothschild LLP.

4. The correspondence address of record for the ‘747 Patent, the ‘154 Patent, and the ‘172 Patent is P.O. Box 1022, Minneapolis, MN 55440-1022. (*See* Exs. 2004-2006.) My review of the filing histories for these patents shows that this has been the recorded correspondence address of record for the ‘747 Patent since July 28, 2014, for the ‘154 Patent since February 3, 2015, and for the ‘172 Patent since September 21, 2015. Exhibit 2004 is a true and correct copy of the correspondence address of record information for the ‘747 Patent available on the PTO’s Public Patent Application Information Retrieval database (“PAIR”). Exhibit 2005 is a true and correct copy of the correspondence address of record information for the ‘154 Patent available on PAIR. Exhibit 2006 is a true and correct copy of the correspondence address of record information for the ‘172 Patent available on PAIR.

5. Each of these three patents was assigned from Select Comfort Corporation to Sleep Number Corporation in 2017, and then promptly recorded. The assignments of the ‘747 and ‘154 Patents to Sleep Number Corporation were recorded in the PAIR database as of November 15, 2017. (Exs. 2008, 2009.) The assignment of the ‘172 Patent to Sleep Number Corporation was recorded in the PAIR database on November 16, 2017. (Ex. 2010.) Exhibit 2008 is a true and correct copy of the Patent Assignment Abstract for the ‘747 Patent available on PAIR. Exhibit 2009 is a true and correct copy of the Patent Assignment Abstract

for the '154 Patent available on PAIR. Exhibit 2010 is a true and correct copy of the Patent Assignment Abstract for the '172 Patent available on PAIR.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 6, 2019

By: /s/ Luke D. Toft
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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 CFR § 42.6, that on May 6, 2019, a true and correct copy of the foregoing Declaration of Lukas D. Toft in Support of Patent Owner's Preliminary Response is being served via e-mail as authorized by the Petitioner at the following e-mail addresses:

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