

Exhibit E

Defendant's Grounds of Invalidity Based on 35 U.S.C. § 112 Pursuant to P.R. 3-3(d)

1. '172 Patent

a. Lack of Written Description under § 112, ¶ 1

The asserted claims of the '172 patent are invalid for failure to satisfy the written description requirement of § 112, ¶ 1. To the extent the following claim elements are even definite under § 112, ¶ 2, the application that became the '1172 patent fails to sufficiently describe the following:¹

- valve enclosure assembly
- for use with an air inflatable mattress
- a processor for providing commands to the improved valve enclosure assembly during an inflate/deflate cycle
- an enclosure
- an enclosure defining a substantially fluidly sealed air chamber
- guides
- stops
- correctly positioning components within the enclosure
- components
- within the enclosure
- valve
- valve . . . being in selective fluid communication with the air chamber
- valve . . . being in fluid communication with the at least one air bladder
- pressure monitor means
- being operably coupled to the processor
- for continuously monitoring the pressure in the at least one bladder
- for monitoring the pressure in the at least one bladder
- pressure monitor means . . . being in fluid communication with the at least one valve
- two or more valves being in fluid communication with both the exterior of the enclosure and with the air chamber
- solenoid is at least partially received within the air chamber of the enclosure
- a pressure monitoring port defining an opening through the enclosure and into an interior of the air chamber

¹ Plaintiff's infringement contentions are overly broad, vague, and fail to provide notice of Plaintiff's infringement theory (if Plaintiff even has one), and therefore are deficient. Plaintiff's infringement contentions fail to demonstrate how various claim limitations provide any meaningful limitations on claims and imply an overly broad claim scope. Plaintiff is also intentionally withholding identification of specific lines and variable names in source code that it believes to meet various claim limitations. Accordingly, the claims, at least as asserted by Plaintiff, lack written description. Defendants reserve the right to amend or supplement and refine its invalidity theories when Plaintiff provides proper infringement contentions that properly disclose its infringement theory and its constructions (if Plaintiff has a legitimate theory and constructions).

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- the pressure sensor configured for continuously monitoring . . . during an inflate/deflate cycle
- enclosure portion
- rear cover portion
- substantially
- partially
- flexible seal
- compressively interposed

Furthermore, Plaintiff has alleged that certain limitations are implemented in software, firmware, and/or source code. However, the specification of this patent does not disclose any software, firmware, and/or source code. Thus, this patent fails to provide adequate disclosure and is invalid for lack of written description.

To the extent a specific basis for invalidity is provided with respect to any claim from which any other claim depends, that basis should be understood to also apply to such dependent claims.

b. Lack of Enablement under § 112, ¶ 1

The asserted claims of the '172 patent are invalid for failure to satisfy the enablement requirement of § 112, ¶ 1. To the extent the following claim elements are even definite under § 112, ¶ 2, the application that became the '172 patent fails to enable one of ordinary skill in the art to make and use the following:²

- valve enclosure assembly
- for use with an air inflatable mattress
- a processor for providing commands to the improved valve enclosure assembly during an inflate/deflate cycle
- an enclosure
- an enclosure defining a substantially fluidly sealed air chamber
- guides
- stops
- correctly positioning components within the enclosure
- components
- within the enclosure
- valve

² Plaintiff's infringement contentions are overly broad, vague, and fail to provide notice of Plaintiff's infringement theory (if Plaintiff even has one), and therefore are deficient. Plaintiff's infringement contentions fail to demonstrate how various claim limitation provide any meaningful limitations on claims and imply an overly broad claim scope. Plaintiff is also intentionally withhold identification of specific lines and variable names in source code that it believes to meet various claim limitation. Accordingly, the claims, at least as asserted by Plaintiff, are not enabled. Defendants reserve the right amend or supplement and refine its invalidity theories when Plaintiff provides proper infringement contentions that properly disclose its infringement theory and its constructions (if Plaintiff has a legitimate theory and constructions).

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- valve . . . being in selective fluid communication with the air chamber
- valve . . . being in fluid communication with the at least one air bladder
- pressure monitor means
- being operably coupled to the processor
- for continuously monitoring the pressure in the at least one bladder
- for monitoring the pressure in the at least one bladder
- pressure monitor means . . . being in fluid communication with the at least one valve
- two or more valves being in fluid communication with both the exterior of the enclosure and with the air chamber
- solenoid is at least partially received within the air chamber of the enclosure
- a pressure monitoring port defining an opening through the enclosure and into an interior of the air chamber
- the pressure sensor configured for continuously monitoring . . . during an inflate/deflate cycle
- enclosure portion
- rear cover portion
- substantially
- partially
- flexible seal
- compressively interposed

To the extent a specific basis for invalidity is provided with respect to any claim from which any other claim depends, that basis should be understood to also apply to such dependent claims.

Furthermore, Plaintiff has alleged that certain limitations are implemented in software, firmware, and/or source code. However, the specification of this patent does not disclose any software, firmware, and/or source code. Thus, this patent fails to provide adequate disclosure and is invalid for lack of enablement.

c. Indefiniteness under § 112, ¶ 2

The asserted claims of the '172 patent are invalid as indefinite under § 112, ¶ 2. The following claim elements are indefinite:³

- valve enclosure assembly

³ Plaintiff's infringement contentions are overly broad, vague, and fail to provide notice of Plaintiff's infringement theory (if Plaintiff even has one), and therefore are deficient. Plaintiff's infringement contentions fail to demonstrate how various claim limitation provide any meaningful limitations on claims and imply an overly broad claim scope. Plaintiff is also intentionally withhold identification of specific lines and variable names in source code that it believes to meet various claim limitation. Accordingly, the claims, at least as asserted by Plaintiff, are indefinite as the specification and claim does not provide sufficient notice of the bounds of the claims. Defendants reserve the right amend or supplement and refine its invalidity theories when Plaintiff provides proper infringement contentions that properly disclose its infringement theory and its constructions (if Plaintiff has a legitimate theory and constructions).

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- for use with an air inflatable mattress
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- guides
- stops
- correctly positioning components within the enclosure
- components
- within the enclosure
- valve
- valve . . . being in selective fluid communication with the air chamber
- valve . . . being in fluid communication with the at least one air bladder
- pressure monitor means
- being operably coupled to the processor
- for continuously monitoring the pressure in the at least one bladder
- for monitoring the pressure in the at least one bladder
- pressure monitor means . . . being in fluid communication with the at least one valve
- two or more valves being in fluid communication with both the exterior of the enclosure and with the air chamber
- solenoid is at least partially received within the air chamber of the enclosure
- a pressure monitoring port defining an opening through the enclosure and into an interior of the air chamber
- the pressure sensor configured for continuously monitoring . . . during an inflate/deflate cycle
- enclosure portion
- rear cover portion
- substantially
- partially
- flexible seal
- compressively interposed

Furthermore, Plaintiff has alleged that certain limitations are implemented in software, firmware, and/or source code. However, the specification of this patent does not disclose any software, firmware, and/or source code. Thus, this patent fails to provide adequate disclosure and reasonable notice of claim scope and is invalid as indefinite.

To the extent a specific basis for invalidity is provided with respect to any claim from which any other claim depends, that basis should be understood to also apply to such dependent claims.

d. Means Plus Function under § 112, ¶ 6

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The following term(s) are subject to § 112, ¶ 6 and render the claim invalid for failure to provide sufficient or where the corresponding structure cannot be identified:⁴

- pressure monitor means

Furthermore, Plaintiff has alleged that this claim and various limitation(s) thereof is implemented in software, firmware, and/or source code. However, the specification of this patent does not disclose any software, firmware, and/or source code. Thus, this patent fails to provide adequate disclosure and corresponding structure and is invalid as indefinite and/or for lack of written description or enablement.

2. '747 Patent

a. Lack of Written Description under § 112, ¶ 1

The asserted claims of the '747 patent are invalid for failure to satisfy the written description requirement of § 112, ¶ 1. To the extent the following claim elements are even definite under § 112, ¶ 2, the application that became the '747 patent fails to sufficiently describe the following:⁵

- providing or receiving an air bed
- selecting a desired pressure setpoint for the air chamber
- desired pressure setpoint
- determining an initial pressure within the pump housing
- pump housing
- within pump housing
- initial pressure
- pressure target
- pressure adjustment factor
- inflate pressure adjustment factor
- deflate pressure adjustment factor
- adjusting pressure . . .
- sensed pressure

⁴ Plaintiff admits that the corresponding structure cannot be identified in the specification by failing to identify the corresponding structure in the specification in its infringement contentions or otherwise. Plaintiff admits further that the corresponding structure lacks written description or enabling disclosure by failing to identify the corresponding structure in the specification in its infringement contentions or otherwise. Thus, the claims are invalid as indefinite and/or for lack of written description or enablement.

⁵ Plaintiff's infringement contentions are overly broad, vague, and fail to provide notice of Plaintiff's infringement theory (if Plaintiff even has one), and therefore are deficient. Plaintiff's infringement contentions fail to demonstrate how various claim limitation provide any meaningful limitations on claims and imply an overly broad claim scope. Plaintiff is also intentionally withhold identification of specific lines and variable names in source code that it believes to meet various claim limitation. Accordingly, the claims, at least as asserted by Plaintiff, lack written description. Defendants reserve the right amend or supplement and refine its invalidity theories when Plaintiff provides proper infringement contentions that properly disclose its infringement theory and its constructions (if Plaintiff has a legitimate theory and constructions).

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