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SLEEP NUMBER CORPORATION

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

SLEEP NUMBER CORPORATION,

Plaintiff,

v.

SIZEWISE RENTALS, LLC,

Defendant.

Case No. 5:18-cv-00356 AB (SPx)

**PLAINTIFF'S AMENDED
DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT
CONTENTIONS**

Complaint Filed: February 20, 2018

Related Case:
5:18-cv-00357 AB (SPx)

1 Pursuant to the Patent Rule (“P.R.”) 3-1 and 3-2, the Orders issued by this
2 Court on August 14, 2018, October 22, 2018, and December 12, 2018, and the
3 parties’ Stipulation Regarding Amending Infringement and Invalidity Contentions,
4 Plaintiff Sleep Number Corporation (“Plaintiff” or “Sleep Number”) hereby serves
5 its Amended Disclosure of Asserted Claims and Infringement Contentions and
6 accompanying disclosure against Defendant Sizewise, LLC (“Defendant” or
7 “Sizewise”). Plaintiff also hereby incorporates by reference its Amended Disclosure
8 of Asserted Claims and Infringement Contentions against Defendant American
9 National Manufacturing, Inc. (“ANM”).

10 These contentions are based on information reasonably available to Plaintiff
11 at this time. Plaintiff’s investigation of the facts relevant to this case is ongoing and
12 discovery is in its preliminary stages. Further, important information about many or
13 all of Defendant’s products is not publicly available, including information relevant
14 to the patents-in-suit and these Infringement Contentions. Further, despite the fact
15 that Plaintiff served timely discovery requests, Defendant has failed to meaningfully
16 respond and has refused to produce documents in advance of Plaintiff serving its
17 infringement contentions, including documents that disclose all of Defendant’s
18 products. Accordingly, Plaintiff reserves the right to modify and/or supplement
19 these disclosures as information becomes available from Defendant and non-parties,
20 including to identify additional accused products after Defendant has made a
21 fulsome document production.

22 **A. P.R. 3-1(a): Identification of Asserted Claims**

23 Pursuant to P.R. 3-1(a) and based on the information presently available,
24 Plaintiff incorporates herein by reference the identification of asserted claims set
25 forth in the Amended Complaint (*see* Dkt. No. 37) and further discloses below the
26 claims of each patent-in-suit that it contends are infringed.

1 Defendant directly infringes and/or has directly infringed (literally and/or
2 under the doctrine of equivalents) the patents-in-suit, by making, using, selling,
3 offering to sell, and/or importing the Accused Products into the United States.
4 Defendant indirectly infringes and/or has indirectly infringed the patents-in-suit by
5 inducing others to infringe, e.g., by providing manuals or instructions. Defendant is
6 further liable for indirect contributory infringement because it sells and/or has sold
7 air controllers that are and/or were especially made or adapted for use in
8 infringement of the patents-in-suit, which are and/or were not otherwise a staple
9 article or commodity of commerce suitable for substantial non-infringing uses, and
10 which do and/or did constitute a material part of the invention and are and/or were
11 used in practicing a patented method. Plaintiff asserts the following claims of the
12 patents-in-suit in connection with the Accused Products identified below and in the
13 attached Exhibits A2, B2, C2:

- 14 • U.S. Patent No. 5,904,172 (“the ’172 Patent”): Claims 2, 6, 12, 16, 20, 22,
15 and 24 (infringement through the expiration of the patent).
- 16 • U.S. Patent No. 9,737,154 (“the ’154 Patent”): Claims 1-22.
- 17 • U.S. Patent No. 8,769,747 (“the ’747 Patent”): Claims 1-19.

18 Plaintiff expressly reserves the right to modify, amend and/or supplement the
19 foregoing in light of new information made available to Plaintiff from Defendant
20 and/or non-parties.

21 **B. P.R. 3-1(b): Identification of Accused Products**

22 Pursuant to P.R. 3-1(b) and based on the information presently available,
23 Plaintiff incorporates herein by reference the identification of Accused Products set
24 forth in the Amended Complaint (*see* Dkt. No. 37) and the attached Exhibits A2, B2,
25 C2, and further identifies the following Accused Products of which it is currently
26 aware:

- ‘172 Patent, Claims 2, 6, 12, 16, 20, 22, and 24; ‘154 Patent, Claims 1-22; ‘747 Patent, Claims 1-18: Models of medical air mattress systems sold by Sizewise or its subsidiary or affiliate that utilize or have utilized the Platinum 5000, Platinum 6000, or other versions or representations of those air controllers, including the Platinum 6000™ product sold on Sizewise’s website, <http://sizewise.com/products/support-surfaces/platinum-6000>. Discovery will determine whether any of the other medical air mattress systems currently or previously listed on Sizewise’s website, <http://sizewise.com/products/support-surfaces>, utilize or have utilized any such air controllers or other air controllers with an air mattress system that satisfy each of the elements of the asserted claims.
- ‘172 Patent, Claims 2, 6, 12, 16, 20, 22, and 24 (to the extent offered for sale prior to the expiration of the patent); ‘154 Patent, Claims 1-19; ‘747 Patent, Claims 1-19: The Instant Comfort 6 and 8 Series listed for sale on Sizewise’s website, <http://sizewise.com/products/support-surfaces/instant-comfort®-6-and-8-series>, which on information and belief utilize ANM’s Gen 3 Arco air controller. These products are represented by the accused products disclosed in Plaintiff’s Disclosure of Asserted Claims and Infringement Contentions against ANM.

The identification of the Accused Products above is based on information reasonably available to Plaintiff at this time. Plaintiff reserves the right to supplement these Infringement Contentions based on information developed in the course of this lawsuit through discovery or additional factual investigation. Additionally, to the extent any of the accused products disclosed in Plaintiff’s Disclosure of Asserted Claims and Infringement Contentions against ANM, which is being served on Sizewise’s counsel, are representative of any product made, used,

1 sold, offered for sale, or imported at a given time by Sizewise, Plaintiff hereby
2 incorporates those products herein pursuant to P.R. 3-1(b).

3 **C. P.R. 3-1(c): Claim Charts**

4 Pursuant to P.R. 3-1(c), and based on the information presently available,
5 Plaintiff attaches hereto the following exhibits identifying specifically where each
6 element of each asserted claim is found within representative Accused Products:
7 Exhibit A2 (the '172 Patent), Exhibit B2 (the '154 Patent), and Exhibit C2 (the '747
8 Patent). Plaintiff also attaches its Supplemental Disclosure to Plaintiffs' Disclosure
9 of Asserted Claims and Infringement Contentions Regarding Representative
10 Products (a/k/a Representative Products Chart), which is incorporated by reference
11 into Exhibits A2, B2, and C2.

12 Plaintiff believes that the Accused Products cited in the attached claim chart
13 exhibits are representative of the Accused Products. Plaintiff further believes that
14 the remaining Accused Products function in the same manner with respect to the
15 accused functionalities.

16 If the charting of the air mattress systems using a Platinum 5000 or Platinum
17 6000 air controller is not representative of one or more products or models above,
18 please identify the non-represented product(s) or model(s) within twenty-one (21)
19 days from the date of service of these contentions.

20 Additionally, to the extent any of the accused products disclosed in Plaintiff's
21 Disclosure of Asserted Claims and Infringement Contentions against ANM, which
22 is being served on Sizewise's counsel, are representative of any product made, used,
23 sold, offered for sale, or imported by Sizewise, Plaintiff hereby incorporates the
24 exhibits attached thereto pursuant to P.R. 3-1(c).

25 1. The '172 Patent and Exemplary Exhibit A2

26 With respect to the '172 Patent, Exhibit A2 shows how each element of each
27 of claims 2, 6, 12, 16, 20, 22, and 24 is found in the exemplary products, a Platinum
28

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