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Filing date: **05/31/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219909
Party	Plaintiff Select Comfort Corporation
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Submission	Other Motions/Papers
Filer's Name	Dennis E. Hansen
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Signature	/Dennis E. Hansen/
Date	05/31/2016
Attachments	Status of Related Civil Action.pdf(8219 bytes) Exhibit Amended Jury Trial Notice.pdf(31596 bytes) COS Status of Related Civil Action.pdf(7133 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/313,414

Filed: June 18, 2014

For the mark: PERSONAL COMFORT AN AIR ADJUSTABLE NUMBER BED & Design

Published in the *Trademark Official Gazette* on November 25, 2014

Select Comfort Corporation,

Opposition No. 91219909

Opposer,

v.

**STATUS OF RELATED CIVIL
ACTION**

Dires, LLC d/b/a Personal Comfort Bed,

Applicant.

In response to the Board's May 23, 2016 request, Select Comfort Corporation submits to the Board this update regarding the status of the related civil action that gave rise to the Board's May 8, 2015 Order staying these proceedings.

The civil action, *Select Comfort Corp., et al. v. Baxter, et al.*, No. 12-cv-2899, DWF-SER (D. Minn. 2012), remains unresolved and pending in the Federal District Court for the District of Minnesota. On May 25, 2016, the Court issued an Amended Jury Trial Notice scheduling the matter for trial beginning on November 29, 2016. A copy of the Amended Jury Trial Notice is submitted herewith.

Because the related civil action is pending and unresolved, this proceeding should remain stayed.

Dated: May 31, 2016

FOX ROTHSCHILD, LLP

By: /s/ Dennis E. Hansen
Barbara J. Grahn
Dennis E. Hansen

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**ATTORNEYS FOR OPPOSER
SELECT COMFORT CORPORATION**

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Select Comfort Corporation, et al.,

Civil No. 12-2899 (DWF/SER)

Plaintiffs,

v.

**AMENDED NOTICE OF ASSIGNMENT
OF CASE FOR JURY TRIAL
NOVEMBER 29, 2016**

John Baxter, et al.,

Defendants.

Date and Location of Trial

The above captioned case is set for a jury trial before the undersigned on **November 29, 2016**, at 9:00 a.m., in Courtroom 7C, 7th Floor, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101. Jury selection will commence at 9:00 a.m. on this date with testimony to follow immediately thereafter. A pretrial conference will be held on November 15 and 16, 2016, at 9:00 a.m., in Courtroom 7C, 7th Floor, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

Documents to be Submitted for Trial

Unless otherwise ordered, counsel shall deliver two courtesy copies of the following documents (including exhibits) marked to the attention of the Court's chambers and delivered to the Warren E. Burger Federal Building and United States Courthouse, Suite 100, St. Paul, Minnesota 55101 by **October 31, 2016**. (**Please Note:** all courtesy copies should be 3-hole punched. Courtesy copies of exhibits should be tabbed for easy identification, and if voluminous, placed in labeled 3-ring notebooks. Documents to be e-mailed to chambers should be sent in WordPerfect X5 or Microsoft Office Word 2010 format to Frank_Chambers@mnd.uscourts.gov.)

1. Documents Required for **ALL TRIALS**:

Document	E-file	E-mail	No Later Than
<p>A. Statement of the Case. A statement of the case indicating the facts which the party intends to prove and indicating any unresolved substantive, evidentiary and procedural issues. The statement shall include the citation and discussion of authority upon which the party relies for its positions on the unresolved issues.</p>	✓	✓	October 31, 2016
<p>B. Exhibit List. If exhibits are to be offered at trial, the following procedure must be followed:</p> <p>(i) Mark all exhibits for identification. All exhibits shall be marked, as much as possible, in the sequence they will be offered, with Arabic numbers. Each exhibit should also be marked with the case number. Example: Pltf. or Deft. #1 Civ. 04-397 (Multiple parties list name, <i>e.g.</i>, Pltf. <u>Smith</u> #1)</p> <p>(ii) Counsel shall make available for examination and, if requested, copying by all counsel, all exhibits which will be offered into evidence at trial. Only exhibits so made available shall be offered into evidence at trial, except for good cause shown.</p>			October 31, 2016
<p>(iii) Submit a list of exhibits that will be presented at trial on behalf of their client(s). The list shall indicate the exhibits the parties agree are admissible. For the exhibits not so agreed upon, the list shall include the grounds for objection. Only exhibits so listed shall be offered into evidence at trial, except for good cause shown.</p>	✓	✓	October 31, 2016

Document	E-file	E-mail	No Later Than
<p>C. Witness List. The list shall include the names and addresses of the witnesses, along with a short statement of the substance of the expected testimony of each witness. Only witnesses so listed shall be permitted to testify except for good cause shown.</p>	✓	✓	October 31, 2016
<p>D. List of Deposition Testimony. (i) List of deposition testimony to be offered into evidence in lieu of live testimony. The list shall designate those specific parts of depositions to be offered at trial. Only depositions so listed shall be offered into evidence at trial except for good cause shown.</p>	✓	✓	October 31, 2016
<p>(ii) Any party who wishes to object to listed deposition testimony shall submit objections.</p>	✓	✓	November 7, 2016
<p>E. Motions in limine. (i) All motions must be filed as outlined in Local Rule 5.1. If a motion has tabbed attachments, please mail or deliver to 700 Federal Courts Building 316 North Robert Street, St. Paul, MN 55101 one copy marked to the attention of the Court's chambers.</p>	✓		October 31, 2016
<p>(ii) All responses to motions in limine must be filed as outlined in Local Rule 5.1. If a response has tabbed attachments, please mail or deliver to 700 Federal Courts Building 316 North Robert Street, St. Paul, MN 55101 one copy marked to the attention of the Court's chambers.</p>	✓		November 7, 2016

2. Additional Documents for **JURY TRIALS**. In all jury trials, counsel shall submit the following documents in addition to those listed above:

Document	E-file	E-mail	No Later Than
<p>A. Joint Statement of the Case. The Court expects the parties to jointly submit a proposed statement of the case. The statement of the case should be a summary of the case, including the title, nature of the action, plaintiff's position, nature of the defense, and defendant's position. (The Court's intent is to give the parties input into the statement that will be read to the jury during voir dire.)</p>	✓	✓	October 31, 2016
<p>B. Proposed Voir Dire Questions.</p>	✓	✓	October 31, 2016
<p>C. Proposed Jury Instructions. Exceptions are provided for those instructions whose need could not be foreseen. Each proposed instruction shall be numbered and on a separate page and shall contain citation to legal authority. Jury instructions are to be submitted in the following format:</p> <p>(i) The parties are required to jointly submit one set of agreed upon instructions. To this end, the parties are required to serve their proposed instructions upon each other two weeks prior to the filing deadline. The parties should then meet, confer, and submit one complete set of agreed upon instructions.</p>	✓	✓	October 31, 2016
<p>D. Proposed Special Verdict Forms.</p>	✓	✓	October 31, 2016

3. Counsel for all parties are strongly encouraged to meet prior to trial to:
- a. Stipulate to all uncontested facts and matters not in controversy.
 - b. Stipulate to which exhibits may be received without objection prior to trial.
 - c. Discuss settlement.

Failure to Comply

The failure of any party to comply with the procedures outlined herein shall result in the imposition of an appropriate sanction.

Questions regarding the calendar may be directed to Brenda Schaffer, Calendar Clerk to Judge Frank, 724 Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, (651) 848-1296.

UNDER THE SPEEDY TRIAL ACT, THE TRIAL OF CRIMINAL CASES MAY BE REQUIRED TO TAKE PRECEDENCE OVER THE TRIALS OF CIVIL CASES.

Dated: May 25, 2016

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

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Select Comfort Corporation,

Opposition No. 91219909

Opposer,

CERTIFICATE OF SERVICE

v.

Dires, LLC d/b/a Personal Comfort Bed,

Applicant.

I, Dennis E. Hansen, hereby certify that on the 31st day of May, 2016, I caused STATUS OF RELATED CIVIL ACTION, to be served by U.S. first class mail, postage prepaid upon the following:

Kyle Elliott, Esq.
Barry L. Pickens, Esq.
SPENCER FANE BRITT & BROWNE LLP
1000 Walnut Street, Suite 1200
Kansas City, MO 64016

Dated: May 31, 2016

FOX ROTHSCHILD, LLP

By: /s/ Dennis E. Hansen
Barbara J. Grahn
Dennis E. Hansen

Campbell Mithun Tower, Suite 2000
222 South Ninth Street
Minneapolis, Minnesota 55402
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