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Filing date: **10/25/2018**

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

Proceeding	91242648
Party	Defendant Dires, LLC
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Submission	Opposition/Response to Motion
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Date	10/25/2018
Attachments	2018-10-25 Applicants Response to Opposers MtD.pdf(31440 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SLEEP NUMBER CORPORATION, f/k/a	}	Opposition No. 91242648
SELECT COMFORT CORPORATION,	}	
	}	Mark: THE ORIGINAL NUMBER
<i>Opposer,</i>	}	BED BY SUSTENA
	}	
v.	}	Application Serial No. 87/532,348
	}	Application Filing Date: 07/18/2017
DIRES, LLC,	}	
	}	
<i>Applicant.</i>	}	

APPLICANT’S RESPONSE TO OPPOSER’S MOTION TO DISMISS OR STRIKE
OPPOSER’S ORIGINAL COUNTERCLAIMS AND RELATED AFFIRMATIVE
DEFENSE PURSUANT TO FED. R. CIV. P. 12(b)(6)

Concurrently with this Response, Applicant Dires, LLC (“Applicant”), has filed its First Amended Affirmative Defenses and Counterclaims (the “Amended Pleading”) for Cancellation of Opposer’s Marks against Opposer Sleep Number Corporation, f/k/a Select Comfort Corporation (“Opposer”). The Amended Pleading sets forth substantially new and different factual allegations and legal statements. The Amended Pleading supersedes the pleading to which Opposer’s Motion to Dismiss was directed. Accordingly, Opposer’s Motion to Dismiss should be denied as moot. See Fed. R. Civ. P. 15(a)(1); JRS Management v. Lynch, 621 Fed.Appx. 978. 980 (Fed. Cir. 2015); Dragon Bleu (SARL) v. VENM, 112 U.S.P.Q.2d 1925, 2014 WL 7206399, *1 (T.T.A.B. December 1, 2014).

Dated: October 25, 2018

Respectfully submitted,

SPENCER FANE LLP

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CERTIFICATE OF SERVICE

The undersign hereby certifies a true and correct copy of the foregoing ***APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO DISMISS OR STRIKE OPPOSER'S ORIGINAL COUNTERCLAIMS AND RELATED AFFIRMATIVE DEFENSE PURSUANT TO FED. R. CIV. P. 12(b)(6)*** was filed with the Trademark Trial and Appeal Board via ESTTA, and was served upon the following attorney of record for Opposer Sleep Number Corporation by e-mail this 25th day of October, 2018:

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