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## INTERNATIONAL TRADE COMMISSION

### Investigation No. 337-TA-971 (Remand)

#### **Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same Commission Determination Vacating the Final Determination Relating to United States Patent No. 5,904,172 and the Limited Exclusion Order Based Thereon; Termination of the Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to vacate the portion of its final determination relating to United States Patent No. 5,904,172 (“the ‘172 patent”) and its limited exclusion order based thereon.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On December 26, 2017, the United States Court of Appeals for the Federal Circuit issued an order holding that the appeal in *Sizewise Rentals LLC v. International Trade Commission*, Appeal No. 2017-2334, had become moot during the pendency of the appeal and remanded the investigation to the Commission to determine whether to vacate the underlying final determination relating to the sole patent at issue on appeal, the ‘172 patent.

The Federal Circuit appeal at issue stemmed from Investigation No. 337-TA-971, *Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same*. This investigation was instituted based on a complaint filed on October 16, 2015 by Complainants Select Comfort Corporation and Select Comfort SC Corporation (collectively, “Complainants”) that alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by Sizewise Rentals LLC, American National Manufacturing Inc., and Dires LLC (d/b/a Personal Comfort Bed) (collectively, “Respondents”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain air mattress systems, components thereof, and methods of using the same that infringe certain claims of the ‘172 patent and United States Patent No. 7,389,554 (“the ‘554 patent”). *See* 80 *Fed. Reg.* 72,738 (Nov. 20, 2015).

On November 18, 2016, the presiding Administrative Law Judge issued a final initial determination (“ID”) finding no violation of section 337 with respect to either patent. The Commission determined to review the ID in part, and on review, the Commission found a violation of section 337 with regard to the ‘172 patent and issued a limited exclusion order prohibiting the unlicensed entry of infringing air mattress systems, components thereof, and methods of using the same. *Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same*, Inv.

No. 337-TA-971, Comm'n Op. at 61-62 (May 17, 2018); 82 *Fed. Reg.* 8623 (Jan. 27, 2017); 82 *Fed. Reg.* 23593-5 (May 23, 2017). The Commission found no violation with regard to the '554 patent.

On July 19, 2017, Respondents filed an appeal to the Federal Circuit requesting review of the Commission's final determination regarding the '172 patent. Appeal No. 2017-2334. On October 18, 2017, the Commission filed a motion to dismiss the appeal as moot because the '172 patent had expired on July 28, 2017. Respondents did not object to the dismissal but requested vacatur of the Commission's final determination. Complainants also did not object to dismissal, but did object to vacatur. On December 26, 2017, the Federal Circuit issued its Order in which the Commission's motion was "granted to the extent that the appeal is deemed moot and the case is remanded for the Commission to address whether to vacate its final determination relating to the '172 patent." Court Order at 3.

On February 26, 2018, the Commission ordered the parties to submit comments on whether the Commission should vacate its final determination regarding the '172 patent. Commission Order at 3. All relevant parties timely filed opening and reply submissions.

The Commission has determined to vacate the portion of its final determination relating to the '172 patent and its limited exclusion order based thereon. The Commission's opinion is being issued concurrently herewith. The Commission hereby terminates this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Lisa Barton  
Secretary to the Commission

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