

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

	)	
Layla Sleep, Inc,	)	
	)	
Plaintiff,	)	Civil Action No.: 3:19-cv-0715-AVC
	)	
vs.	)	
	)	JURY TRIAL
Direct Supply, Inc.	)	DEMANDED
	)	
Defendant.	)	
	)	

## **FIRST AMENDED COMPLAINT**

Plaintiff Layla Sleep, Inc. (“Plaintiff” or “Layla”) alleges as follows for its Complaint against Defendant Direct Supply, Inc. (“Defendant”):

## Parties

1. Plaintiff is a Delaware corporation having a primary place of business at 157 Church Street, New Haven, Connecticut 06510.
2. On information and belief, Defendant is a Wisconsin corporation having a place of business at 7311 W. Green Tree Road, Milwaukee, Wisconsin 53223.

### Nature of the Action

3. This is a civil action for declaratory judgment of non-infringement, invalidity, and unenforceability of a United States patent pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the United States Patent Law, 35 U.S.C. § 100 *et. seq.*, and for such other relief as the Court deems just and proper.

### **Jurisdiction and Venue**

4. Plaintiff's claims for relief herein arise under the patent laws of the United States, including 35 U.S.C. § 101 et seq., the Declaratory Judgment Act, and 28 U.S.C. §§ 2201 and 2202.

5. This District has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

6. On information and belief, this Court has personal jurisdiction over the Defendant because it has made constitutionally sufficient minimum contacts with Connecticut and has purposefully availed itself of the benefits and protections of the laws of this state and judicial district. On information and belief, Defendant maintains ongoing contractual relationships and conducts business in this district.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District, and because Plaintiff and, on information and belief, Defendant, conduct business in this District.

### **Facts**

8. Plaintiff re-alleges the preceding paragraphs in this Complaint as though fully set forth herein.

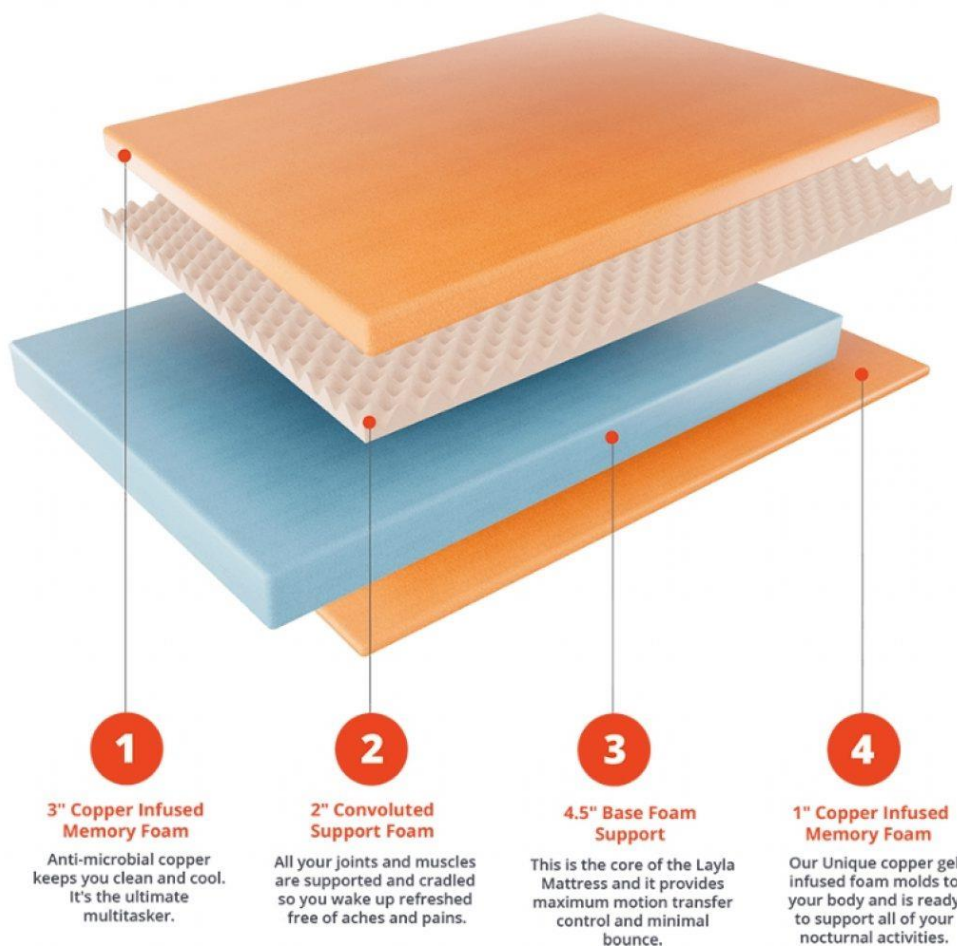
9. Plaintiff is registered with the Connecticut Secretary of State to do business in Connecticut.

10. Plaintiff's headquarters is in New Haven, Connecticut.

11. The Plaintiff is a start-up company founded by Connecticut resident Akrum Sheik. The company specializes in marketing and selling LAYLA branded mattresses and related products through its website at [www.laylasleep.com](http://www.laylasleep.com) and through authorized third parties, such as

Amazon. The Plaintiff has experienced substantial growth since its founding in 2016 and currently offers its LAYLA branded mattresses (“LAYLA Mattress”) to consumers throughout the United States and Canada.

12. The LAYLA Mattress includes multiple layers of foam inside of a mattress cover. The layers are selected so that the LAYLA Mattress comes out of the box with two built-in comfort levels. The soft side of the Layla Mattress has a firmness level of about 4.5 out of 10, and the firm side is a 7 out of 10. A marketing image illustrating the layers in the LAYLA Mattress is shown below:



13. Multilayer foam mattresses are well known in the prior art, having been sold for many years before the priority date of the Asserted Patent.

14. For example, US Publication No. 2010170042 to Rose for Memory Foam Mattress and Method of Construction is prior art to the Asserted Patent.

15. Rose states in the Background Section that “[a] basic foam mattress may include one or more layers of foam having desirable properties and that are enveloped into a fabric cover. Typically, such a foam mattress may include a center core of relatively high resilience foam sandwiched between two layers of lower resilience foam encased in a fabric shell. This configuration allows for a reversible mattress.”

16. In addition to Rose, at least the following references, each of which is prior art to the Asserted Patent, establishes that multilayer foam mattresses were well known in the prior art. These publications are individually and collectively referred to as Prior Art.

- a. US Publication No. 2013/0174344 to Klancnik;
- b. US Patent No. 3,885,258 to Reagan;
- c. US Patent No. 3,353,417 to Boyles;
- d. US Publication No. 2010/0058541 to Kemper;
- e. US Patent No. 5,513,402 to Schwartz;

17. Defendant’s headquarters is located in Wisconsin.

18. Defendant is an industrial supply company with over 1,300 employees.

19. Defendant sells various senior living medical products, including medical mattresses.

20. On or about August 9, 2018, Defendant’s in-house counsel sent a letter by FedEx to Plaintiff alleging that Plaintiff had infringed Defendant’s U.S. Patent No. 9,877,591 B2 (the

“’591 patent” or the “Asserted Patent”) entitled “Medical Mattress with Firmness Adjustment” which bears an issuance date of January 30, 2018. A copy of the ’591 patent is attached as Exhibit A. On information and belief, the Defendant is the assignee of the entire right, title, and interest in and to the ’591 patent.

21. The letter accused Plaintiff’s LAYLA Mattress of infringing the ’591 patent.

22. In the letter, Defendant offered Plaintiff a limited, revocable, non-exclusive license to the ’591 patent for Plaintiff to continue to sell LAYLA Mattresses in exchange for 5% of Plaintiff’s revenue. Defendant threatened to sue Plaintiff for patent infringement if it did not agree to pay the license.

23. On or about October 10, 2018, Defendant’s outside counsel sent Plaintiff a follow-up letter by FedEx stating that Plaintiff had one week to agree to the license or Defendant would sue Plaintiff for patent infringement.

24. On or about October 23, 2018, Plaintiff responded to Defendant by rejecting the license agreement.

25. On or about October 31, 2018, Defendant responded to Plaintiff stating that the LAYLA Mattress did in fact infringe on claim 16 of the ’591 patent and that Plaintiff had until November 7 to respond by either providing reasons why LAYLA Mattress did not infringe claim 16 of the ’591 patent or accepting the license agreement.

26. On or about November 7, 2018, Plaintiff responded to Defendant with reasons why LAYLA Mattress does not infringe on claim 16 of the ’591 patent, such as pointing out that the phrase “volume weighted IFD values” in claim 16 is indefinite. Plaintiff asked for this matter to be resolved quickly.

27. Four months later on or about April 2, 2019, Defendant finally sent a response to Plaintiff alleging that Plaintiff had infringed claims 1, 7, and 16 of the '591 patent and threatened to sue Plaintiff if Plaintiff did not respond in only a week.

28. Defendant's allegations of infringement of the '591 patent have presented a substantial controversy between the parties who have adverse legal interest of sufficient immediacy and reality toward the issuance of a declaratory judgment as to Plaintiff's non-infringement, invalidity, and unenforceability of the '591 patent.

29. Plaintiff has not infringed directly or indirectly any valid or enforceable claim of the '591 patent.

### **COUNT I**

#### **Declaratory Judgment of Non-Infringement of '591 Patent**

30. Plaintiff re-alleges the preceding paragraphs in this Complaint as though fully set forth herein.

31. Plaintiff has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '591 patent, either literally or under the doctrine of equivalents.

32. Claim 1 of the '591 patent requires "a first polymer foam layer adjacent to the first supporting surface ha[ving] a lesser indentation force deflection (IFD) than the polymer foam layer adjacent to the second supporting surface."

33. The LAYLA Mattress does not infringe claim 1 because Layla's foam layer adjacent to the first support surface has the same IFD as the foam layer adjacent to the second surface.

34. Defendant had actual knowledge that Layla's foam layer adjacent to the first support surface has the same IFD as the foam layer adjacent to the second surface before

Defendant sent its April 2, 2019 cease and desist letter. For example, this is shown in the above Layla marketing image which Defendant solely based its contention of infringement.

35. Despite having actual knowledge that the LAYLA Mattress can not infringe claim 1, Defendant threatened to sue Plaintiff for patent infringement of claim 1 unless it agreed to pay a 5% royalty to Defendant.

36. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

37. A judicial declaration of non-infringement is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '591 patent.

**COUNT II**  
**Declaratory Judgment of Invalidity of '591 Patent**

38. Plaintiff re-alleges the preceding paragraphs in this Complaint as though fully set forth herein.

39. The '591 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of the 35 U.S.C. §§ 100 *et. seq.*, 101, 102, 103, and 112.

40. At least claims 1, 7, and 16 of the '591 patent are invalid over the Prior Art.

41. Upon information and belief, at least claims 1, 7 and 16 are invalid over one more mattresses sold by Defendant before the priority date of the '591 patent.

42. Defendant had actual knowledge that the asserted claims of the '591 patent were invalid and nevertheless threatened Plaintiff with infringement of those claims

43. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

44. A judicial declaration of invalidity is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '591 patent.

**COUNT III**  
**Declaratory Judgment of Unenforceability of '591 Patent**

45. Plaintiff re-alleges the preceding paragraphs in this Complaint as though fully set forth herein.

46. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

47. A judicial declaration of unenforceability is necessary and appropriate so that Plaintiff may ascertain its rights regarding the enforceability of the '591 patent.

48. Plaintiff is entitled to a declaratory judgment that the '591 patent is unenforceable due to inequitable conduct before the United States Patent and Trademark Office (USPTO) as further described with particularity below.

49. Upon information and belief, Defendant's claim 16 of the '591 patent is indefinite and has no meaning in the art, as the term "volume weighted IFD" is not defined in the specification or known in the prior art and is only found in claim 16.

50. On or about September 5, 2013, Defendant attorneys filed a utility patent application for the '591 patent.

51. Defendant's term "volume weighted IFD" is not defined in the specification and is only found in claim 16.

52. In Defendant's October 1, 2014 Response to Non-final Office Action, Defendant's attorney states that claim 16 overcomes the obviousness rejection because neither prior art reference teaches "weighted IFD values".



53. In Defendant's April 30, 2015 Appeal Brief, Defendant's attorney Kyle Costello states that support for the "volume weighted IFD" can be found in paragraph [0047] of the specification. However, paragraph [0047] of the specification makes no reference to "volume weighted IFD."

54. Further in Defendant's April 30, 2015 Appeal Brief, Defendant's attorney states that claim 16 overcomes obviousness rejections because unlike claim 1, claim 16 includes the limitation of "volume weighted IFD values in a half of the mattress closest to the first support surface are lower than volume weighted IFD values in a half of the mattress closes to the second support surface."

55. The Defendant's attorney Kyle Costello alleged in the Reply Brief that volume weighted IFD was a term well known in the prior art and defined in the specification.

56. Despite making these written assertions in a Reply Brief to the Patent Trial and Appeal Board, Mr. Costello had actual knowledge that the term was not defined in the specification and that it was not well known in the art.

57. Volume weighted IFD is not defined in the '591 patent.

58. A general Google search for the term "volume weighted IFD" does not return any results (except those directly linking to the '591 patent).

59. In the August 2, 2017 Patent Board Decision, the Board accepted Defendant's claim 16 based on Defendant's attorney's statement that the limitation of "volume weighted IFD" overcomes the obviousness rejection.

60. The '591 patent is unenforceable for failure to meet the conditions of 37 C.F.R. 11.18, as Defendant's attorney prosecuted the '591 patent and knowingly signed various Briefs

and Responses stating that the limitation of “volume weighted IFD” in claim 16 is defined in the specification and well known in the art.

61. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

62. A judicial declaration of unenforceability is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '591 patent.

### **PRAYERS FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- A. The past, present, and continued manufacture, marketing, and sale of mattresses by Plaintiff does not infringe, unfairly complete, or dilute U.S. Patent No. 9,877,591;
- B. That U.S. Patent No. 9,877,591 is invalid;
- C. That U.S. Patent No. 9,877,591 is unenforceable;
- D. Defendant, its officers, agents, servants, employees, and attorneys and those persons in active concert or participation or otherwise privy with it, be permanently enjoined and retained from instituting, prosecuting or threatening any action against Plaintiff, or any of its affiliates, or anyone in privity with them with respect to the manufacture, marketing and sale of mattresses.
- E. Plaintiff have and recover from Defendant reasonable attorney's fees, costs and disbursements of this civil action pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117 and;

F. Plaintiff have such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Rule 38.1 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Connecticut, Plaintiff respectfully demands a trial by jury on all claims and issues so triable to a jury in this action.

Respectfully submitted,

Date: September 27, 2019

/s/ Walter B. Welsh

Walter B Welsh, ct27210

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*Attorneys for Plaintiff Layla Sleep, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that on this 27th day of September 2019, a true and correct copy of the foregoing **PLAINTIFF'S FIRST AMENDED COMPLAINT** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

September 27, 2019

/s/ Joan M. Burnett