

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SERTA SIMMONS BEDDING, LLC and
DREAMWELL, LTD.

Plaintiffs,

v.

CASPER SLEEP INC.

Defendant.

Civil Action No. 17-cv-7468

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Serta Simmons Bedding, LLC (“Serta Simmons”) and Dreamwell, Ltd. (“Dreamwell”) (collectively, “Plaintiffs”), by their undersigned attorneys, demand a trial by jury on all issues so triable and bring this action against Defendant Casper Sleep Inc. (“Casper” or “Defendant”) as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of U.S. Patent Nos. 7,424,763 (“the ’763 Patent”), 7,036,173 (“the ’173 Patent”), and 8,918,935 (“the ’935 Patent”). True and correct copies of the ’763, ’173, and ’935 Patents (collectively, the “Asserted Patents”) are attached hereto as Exhibits 1, 2, and 3, respectively.

THE PARTIES

2. Serta Simmons is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 3560 Lenox Road, Suite 1100, Atlanta, Georgia 30326.

3. Serta Simmons is the company behind the Serta®, Simmons® Beautyrest®, and Tomorrow™ brands.

4. Dreamwell is a limited liability company organized and existing under the laws of the State of Nevada, having a principal place of business at 3560 Lenox Road, Suite 1100, Atlanta, Georgia 30326. Dreamwell is a wholly-owned subsidiary of SSB Manufacturing Company (f/k/a Simmons Bedding Company), which is a wholly-owned subsidiary of Serta Simmons. Dreamwell is controlled by Serta Simmons and does not exercise any independence over its operations, dealings, or financial reporting.

5. Upon information and belief, Casper is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 230 Park Avenue South, 13th Floor, New York, New York 10003.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper in this judicial district under 28 U.S.C. § 1400(b) because Casper has committed acts of patent infringement complained of herein in this judicial district and has a regular and established place of business in this judicial district.

8. This Court has personal jurisdiction over Casper because Casper's principal place of business is located in this judicial district and Casper regularly conducts business in this district. Casper has purposefully availed itself of the privilege of conducting activities within this forum. Casper's activities in this forum are continuous and systematic, and give rise to the liabilities sued upon herein. More specifically, Casper's activities in this forum include, *inter alia*, selling and offering to sell infringing products in this forum, and marketing and advertising

infringing products in this forum. Upon information and behalf, Casper does extensive business within the State of New York and earns substantial amounts of revenue through its contacts with the forum. These activities far exceed the minimum requisite contacts.

THE SERTA SIMMONS CHANNEL CUT TECHNOLOGY

9. Serta Simmons operates its business under two iconic brands Serta® and Simmons® Beautyrest® that were combined under common ownership in 2010—both brands long-known as pioneers and innovators in the mattress and sleep experience industry. In 1876, Simmons became the first manufacturer to mass-produce woven wire mattresses; and in 1925, Simmons first developed and sold the Beautyrest® mattress featuring wire coils individually enclosed in fabric enclosures—Simmons’ Pocketed Coil® technology. It was the first mass-produced mattress with this technology providing individual support and motion separation, so couples could sleep undisturbed. Meanwhile, Serta introduced the Perfect Sleeper® mattress in 1931, the Sertapedic® mattress in the 1950s, a continuous coil innerspring design in the 1980s, and the breakthrough iComfort® Sleep System featuring the latest in gel memory foam technology in 2011.

10. Among Serta Simmons’ many innovations are those disclosed and claimed in the Asserted Patents.

11. The ’763 Patent, titled “Channel-Cut Cushion Supports,” was fully and legally issued on September 16, 2008 to inventor Richard F. Gladney. Dreamwell is currently the owner and possessor of all rights pertaining to the ’763 Patent. Serta Simmons is the beneficial and equitable owner of all such rights.

12. The ’173 Patent, titled “Channel-Cut Cushions Supports,” was fully and legally issued on May 2, 2006 to inventor Richard F. Gladney. Dreamwell is currently the owner and

possessor of all rights pertaining to the '173 Patent. Serta Simmons is the beneficial and equitable owner of all such rights.

13. The '935 Patent, titled "Channel-Cut Cushions Supports," was fully and legally issued on December 30, 2014 to inventor Richard F. Gladney. Dreamwell is the owner and possessor of all rights pertaining to the '935 Patent. Serta Simmons is the beneficial and equitable owner of all such rights.

14. Each of the '763, '173, and '935 Patents claims priority to U.S. Patent App. No. 10/274,441, which was filed with the U.S. Patent and Trademark Office on October 17, 2002.

15. As the specification for the Asserted Patents explains: "The support characteristics within a foam mattress body may be varied by inserting reinforcements of various types into channels cut or otherwise formed within the foam."

16. Figure 1 of the Asserted Patents appears as **Figure 1**, below:

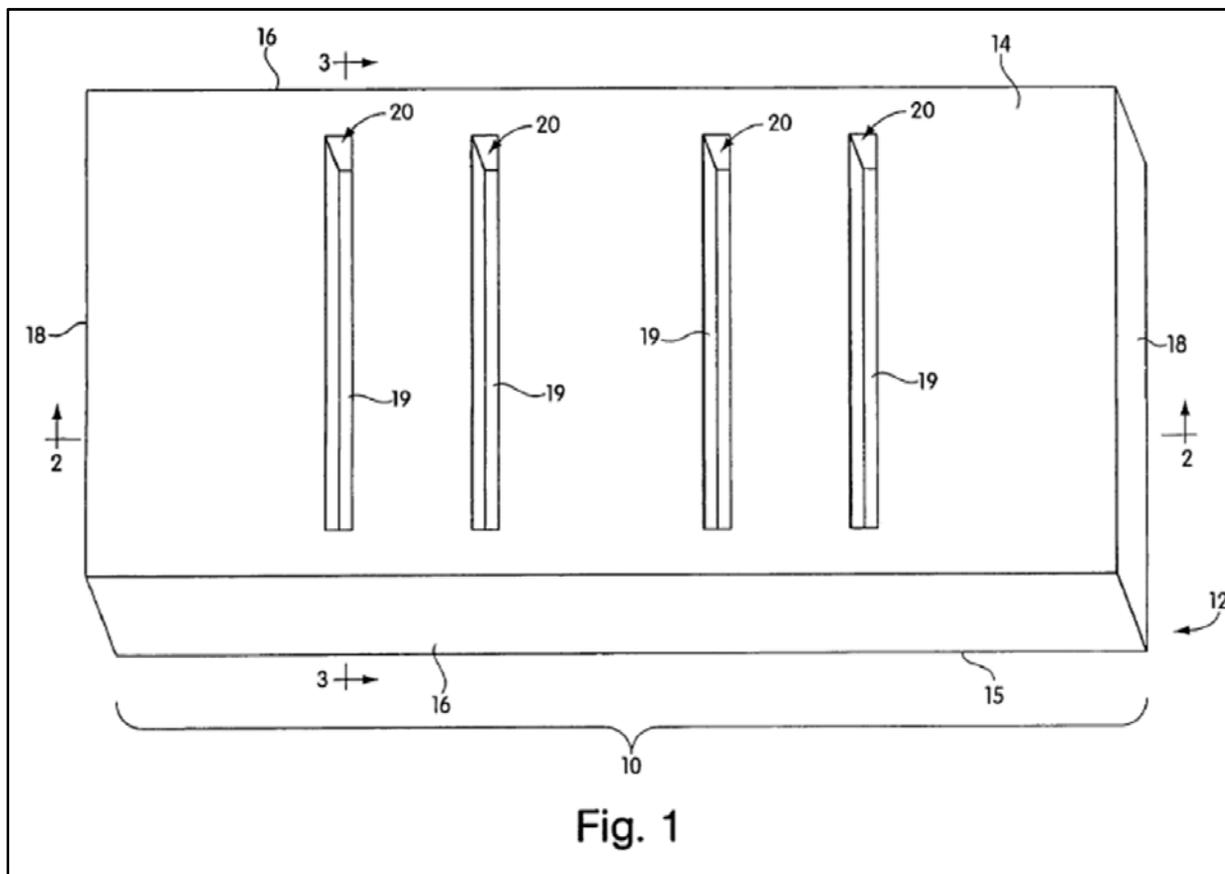


Fig. 1

Figure 1

17. As disclosed in the specification of the Asserted Patents with reference to Figure 1, “the body 12 [of the depicted mattress 10] could be formed of a combination of various types of foam with different mechanical characteristics. For example, the body 12 could be composed of multiple layers of such material, varying in respective mechanical characteristics, progressing in layer upon layer from the top surface 14 to the bottom surface 15.” Ex. 1 (’763 Patent) at Col. 2:27-33; Ex. 2 (’173 Patent) at Col. 2:22-27; Ex. 3 (’935 Patent) at Col. 2:33-39.

18. “At least one channel 19 is disposed within the body 12.” Ex. 1 at Col. 2:39; *see also* Ex. 2 at Col. 2:33; Ex. 3 at Col. 2:45. The specification continues: “An insert 20 may be located within the channel 19. The embodiment in FIG. 1 has four such channels 19 and four

corresponding inserts 20.” Ex. 1 at Col. 2:40-42; *see also* Ex. 2 at Col. 2:33-36; Ex. 3 at Col. 2:45-48.

19. The specification further states the following: “As in the embodiment in FIG. 1, the channels 19 and respective inserts 20 may be placed and distributed along the axis connecting the end surfaces 18 to provide for areas of different firmness or support characteristics along the body of one or more users lying on the mattress 10.” Ex. 1 at Col. 2:47-52; *see also* Ex. 2 at Col. 2:41-46; Ex. 3 at Col. 2:53-58. “In general,” the specification explains, “the insert would provide a smaller [Indentation Load Deflection (“ILD”)], i.e., greater firmness, than the surrounding foam of a mattress body.” Ex. 1 at Col. 2:65-67; *see also* Ex. 2 at Col. 2:59-61; Ex. 3 at Col. 3:4-6.

20. Figure 2 of the Asserted Patents, reproduced as **Figure 2**, provides a cross-sectional view:

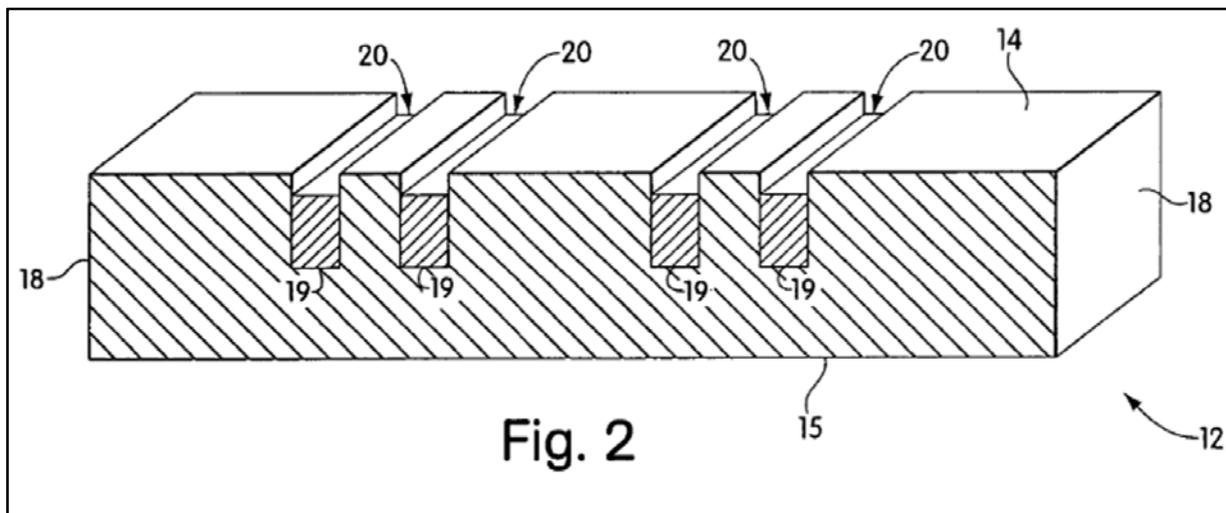


Figure 2

THE INFRINGING CASPER WAVE MATTRESS

21. Upon information and belief, Casper entered into the mattress marketplace with the “Casper” mattress in or around April 2014. As depicted in **Figure 3**, the Casper mattress is comprised of four foam layers:

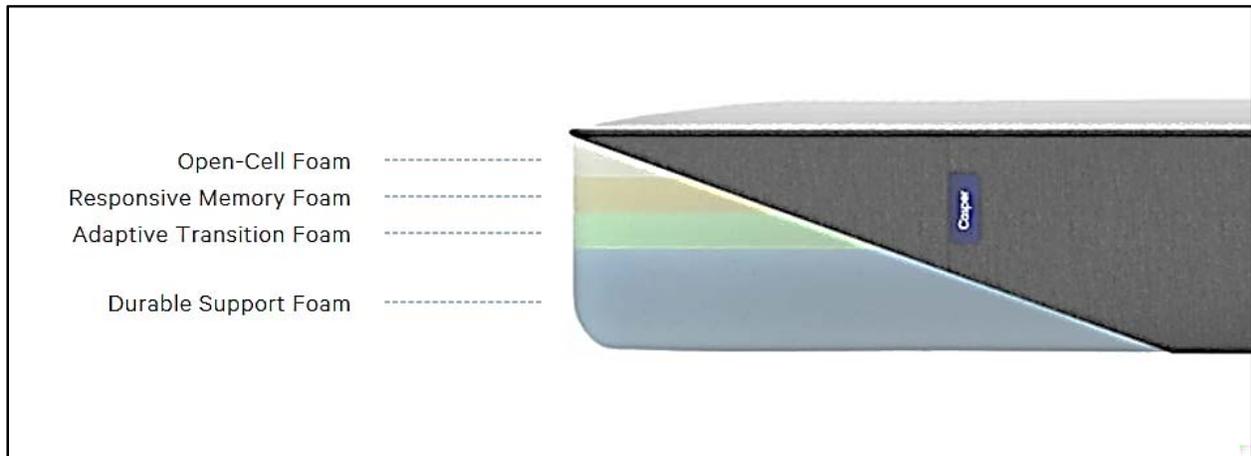


Figure 3

22. Upon information and belief, Casper earned \$1 million in revenue within the first 28 days of launching the Casper mattress in 2014, \$100 million in total revenue in 2015, and \$200 million in total revenue in 2016.

23. Upon information and belief, Casper raised \$170 million in its latest round of investment in June 2017. Target was the lead investor in the June 2017 investment round.

24. Upon information and belief, Casper is planning an initial public offering.

25. Upon information and belief, on August 15, 2017, Casper announced the launch of the first new mattress product Casper has released since the Casper mattress in 2014: the “Casper Wave” mattress. See Exhibit 4 (<http://www.prnewswire.com/news-releases/sleep-pioneer-introduces-the-casper-wave-300504682.html>).

26. Casper describes the Casper Wave mattress as “[o]ur most innovative mattress. Engineered with targeted support for the best sleep humanly possible.” Exhibit 5 (<https://casper.com/mattresses>) at 1.

27. Casper describes the Casper Wave mattress as providing “[t]argeted back and core support” and “[p]recision contouring for pressure relief.” Exhibit 6 (<https://casper.com/mattresses/casper-wave>) at 1. Casper provides the following depiction (**Figure 4**) of the Casper Wave mattress:

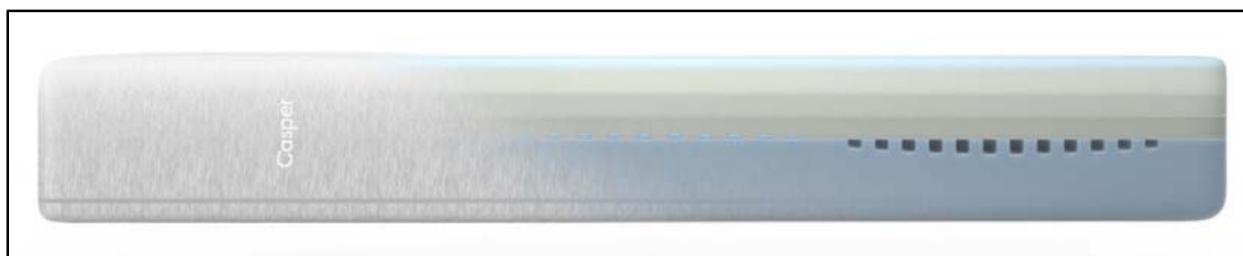


Figure 4

28. Casper also provides the following depiction (**Figure 5**) of the five layers that comprise the Casper Wave mattress:

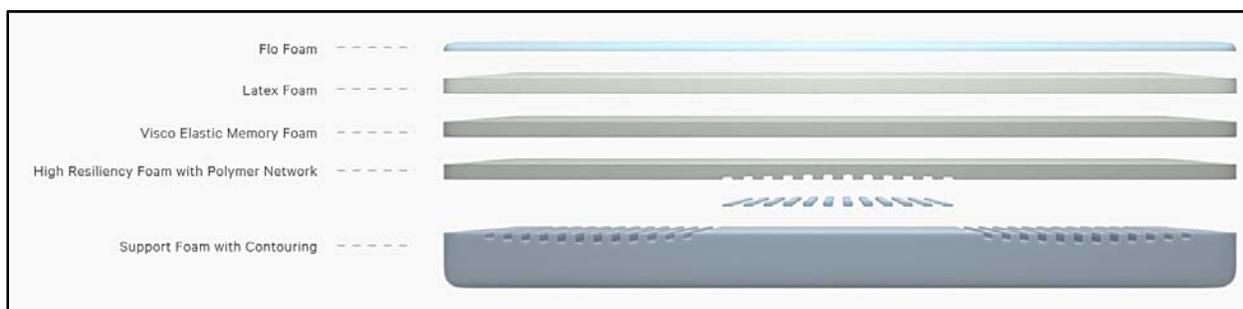


Figure 5

29. As depicted in **Figures 4 and 5**, a series of channels are cut into the bottom surface of the “High Resiliency Foam” layer of the Casper Wave mattress. In the video on its website (<https://casper.com/mattresses/casper-wave/?wvideo=17mxjdtb8>), Casper provides the

following description: “We are pursuing a very similar way for making things firmer. We design and engineer these very specific cuts.”

30. As further depicted in **Figures 4 and 5**, a so-called “Polymer Network” is situated between the “High Resiliency Foam” and “Support Foam” layers of the Casper Wave mattress. Casper describes this “Polymer Network” as “[a] reinforced polymer network [that] complements the curves of your back and hips for firmer support where you need it most.” Ex. 6 at 2-3. In the video on its website, Casper provides the following additional description: “Now we introduce a new material—this elastic polymer—that makes it firmer but to a very specified amount.”

31. The strips that comprise the Polymer Network are fitted into the channels cut in the High Resiliency Foam layer.

32. Upon information and belief, the position of the strips within the channels is maintained using an adhesive.

33. Upon information and belief, the Support Foam layer prevents the strips that comprise the Polymer Network from shifting out of position.

34. In the few weeks that have passed since it was first announced, the Casper Wave mattress has received significant publicity. Its launch has been covered by popular publications including Business Insider, Tech Crunch, Fast Company, Curbed, and Architectural Digest.

35. Much of the publicity relating to the Casper Wave mattress focuses on Casper’s use of the Serta Simmons Channel Cut Technology. For example, Architectural Digest describes the Casper Wave as “offer[ing] unprecedented ergonomic technology, comprised of finely tuned contouring zones and polymer support channels” Exhibit 7 at 2. Fast Company describes the Casper Wave as “stand[ing] out from existing products in the marketplace because it uses

different materials along the length of the mattress to better accommodate the human body's physiology." Exhibit 8 at 3.

36. Upon information and belief, Casper manufactures and/or has contracted with others to manufacture on its behalf the Casper Wave mattress in the United States. As depicted in **Figure 6**, Casper states on its website "[t]he Casper Wave is designed and assembled in the United States of America." Exhibit 9.



Figure 6

Attached as Exhibit 10 (**Figure 7**) is a true and accurate copy of a law label for a Casper Wave mattress, which states the mattress was "MADE FOR Casper Sleep, Inc." and was "ASSEMBLED IN USA."



Figure 7

37. Upon information and belief, Casper has entered into a contractual relationship with Jeffco Fibres, Inc. (“Jeffco”) whereby Jeffco manufactures Casper Wave mattresses for and on behalf of Casper. Attached as Exhibit 11 (**Figure 8**) is a true and accurate copy of a flammability label for a Casper Wave mattress, which states that the mattress was manufactured by Jeffco.

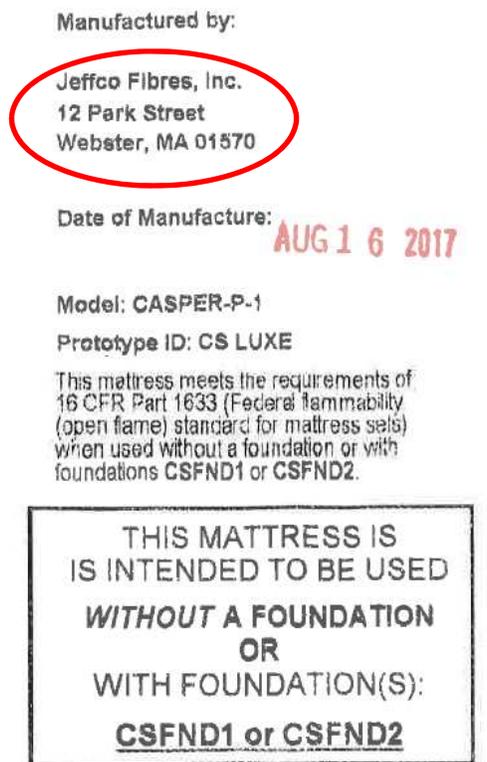


Figure 8

38. Upon information and belief, Casper has sold, sells, and offers for sale the Casper Wave mattress in and throughout the United States. Casper offers for sale and sells the Casper Wave mattress direct to consumers online via Casper’s website. And Casper has announced its intention to launch fifteen “pop-up” retail stores in October 2017. According to Architectural Digest, “[t]he big brick-and-mortar push is meant to give people a chance to try the new Casper

Wave” Exhibit 12 (<https://www.architecturaldigest.com/story/casper-announces-15-mattress-pop-up-shops-across-the-country>) at 2.

39. The Casper website identifies the following selling prices for available sizes of the Casper and Casper Wave mattresses:

	Twin	Twin XL	Full	Queen	King	Cal King
Casper	\$550	\$600	\$800	\$950	\$1150	\$1150
Casper Wave	\$1000	\$1150	\$1650	\$1850	\$2250	\$2250

40. Upon information and belief, the significant difference in the selling prices of the Casper and Casper Wave mattresses is primarily attributable to Casper’s unauthorized use of the Serta Simmons Channel Cut Technology. Casper’s unauthorized use is unsurprising given that Casper openly states on its website that it has “disrespect for the existing mattress industry.” Exhibit 13 (<https://casper.com/mattresses/design/>) at 5.

FIRST CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 7,424,763
(35 U.S.C. § 271(a))

41. Plaintiffs incorporate the foregoing allegations as if fully realleged and restated herein.

42. Upon information and belief, the ’763 Patent is valid and enforceable.

43. Upon information and belief, in violation of 35 U.S.C. § 271(a), Casper has directly infringed, and continues to directly infringe, the ’763 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, and/or selling Casper Wave mattresses, which satisfy the limitations of one or more claims of the ’763 Patent.

44. Exemplary independent Claim 1 of the ’763 Patent recites the following:

[Preamble] A mattress comprising:

[1a] a body made of foam having a mechanical characteristic, **[1b]** the body having a top surface, a bottom surface, a first and second side surfaces and a first and second end surfaces, **[1c]** at least one of the top and bottom surfaces including a plurality of channels extending into the body perpendicularly therefrom; and

[2a] a plurality of inserts, **[2b]** each insert having a mechanical characteristic different from the mechanical characteristic of the foam and **[2c]** affixed within one of the plurality of channels, **[2d]** each insert reinforcing the body.

45. Upon information and belief, the Casper Wave mattress embodies all elements of at least Claim 1 of the '763 Patent.

46. To the extent the Preamble of Claim 1 of the '763 Patent is considered to be a limitation, the Casper Wave mattress satisfies the Preamble, because it is a mattress.

47. Upon information and belief, the Casper Wave mattress satisfies element 1a of Claim 1 at least because the “High Resiliency Foam” layer is a body made of foam having a mechanical characteristic. The High Resiliency Foam layer is identified in **Figure 9**.

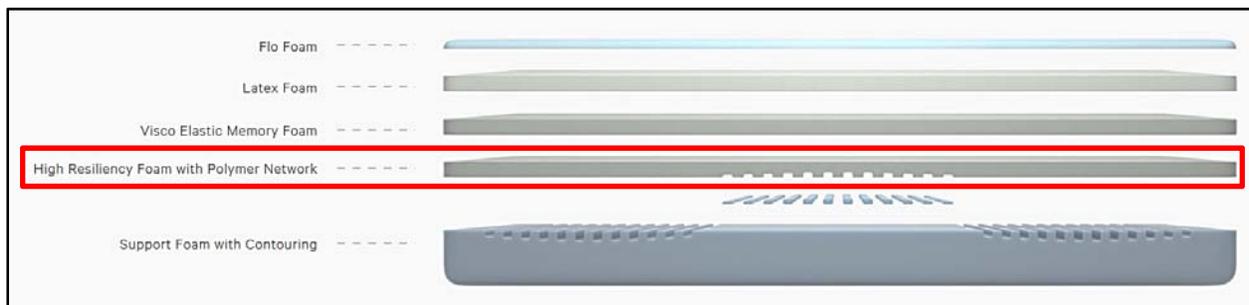


Figure 9

48. Upon information and belief, the Casper Wave mattress satisfies element 1b of Claim 1 at least because the “High Resiliency Foam” layer has a top surface, a bottom surface, a first and second side surfaces, and a first and second end surfaces. These surfaces are identified in **Figure 10**.¹

¹ The second side surface is not depicted, but is understood to be opposite the depicted first side surface.

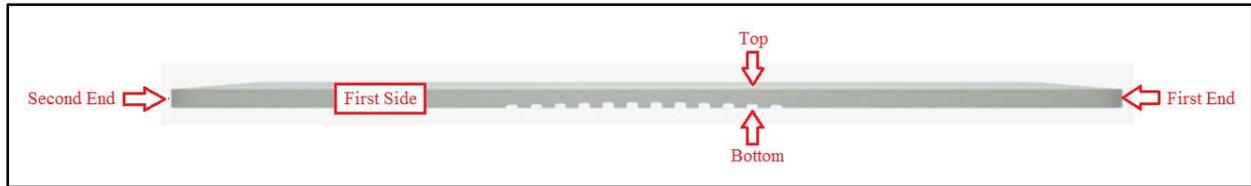


Figure 10

49. Upon information and belief, the Casper Wave mattress satisfies element 1c of Claim 1 at least because the “High Resiliency Foam” layer has a plurality of channels extending perpendicularly into the body from the bottom surface thereof. The channels are identified in **Figure 11**.

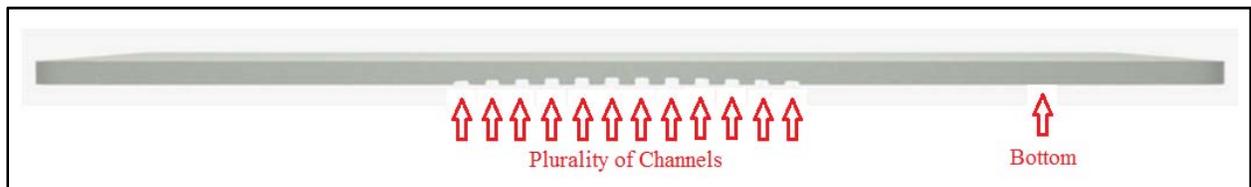


Figure 11

50. Upon information and belief, the Casper Wave mattress satisfies element 2a of Claim 1 at least because the “Polymer Network” of the Casper Wave comprises a plurality of inserts. The inserts are identified in **Figure 12**.

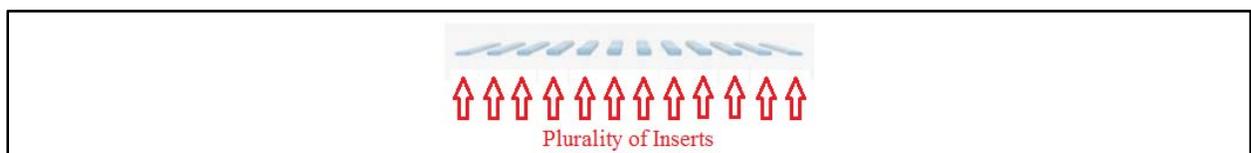


Figure 12

51. Upon information and belief, the Casper Wave mattress satisfies element 2b of Claim 1 at least because the inserts comprising the “Polymer Network” have a mechanical characteristic different from the mechanical characteristic of the “High Resiliency Foam.” More specifically, as depicted in **Figure 13**, Casper describes the polymer network as “reinforced” and offering “firmer support.” *See also* Ex. 6.

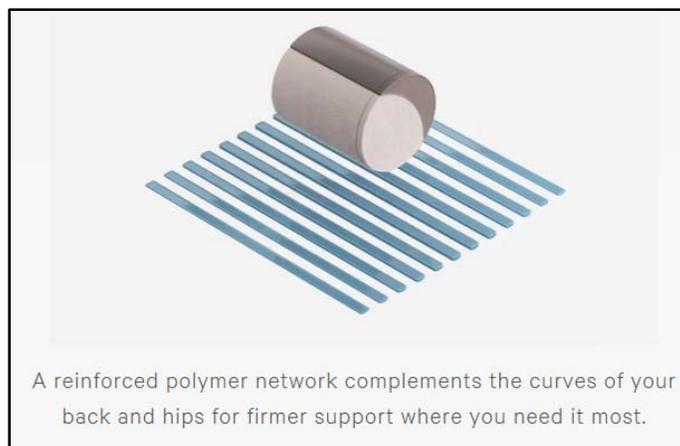


Figure 13

52. Upon information and belief, the Casper Wave mattress satisfies element 2c of Claim 1 at least because each of the inserts comprising the “Polymer Network” is affixed within one of the plurality of channels in the “High Resiliency Foam” layer. **Figure 14** identifies the inserts affixed in the channels. *See also* Ex. 6.



Figure 14

53. Upon information and belief, the Casper Wave mattress satisfies element 2d of Claim 1 at least because each insert reinforces the “High Resiliency Foam” layer to provide “firmer support” to the area of the mattress including the channels. This is identified in **Figure 15**.



Figure 15

54. Plaintiffs have given Casper notice of its infringement at least by virtue of service or acknowledged delivery of this Complaint.

55. Plaintiffs have been and continue to be damaged by Casper's infringement of the '763 Patent. Plaintiffs are entitled to money damages in an amount adequate to compensate Plaintiffs for Casper's infringement, but in no event less than a reasonable royalty for the use made of the invention by Casper, together with interest and costs as fixed by the Court.

56. Plaintiffs have been and continue to be irreparably harmed by Casper's infringement of the '763 Patent such that money damages cannot sufficiently compensate for such irreparable harm. Unless preliminary and permanent injunctive relief is granted enjoining Casper and its agents, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '763 Patent, Plaintiffs will continue to be greatly and irreparably harmed.

SECOND CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 7,036,173
(35 U.S.C. § 271(a))

57. Plaintiffs incorporate the foregoing allegations as if fully realleged and restated herein.

58. Upon information and belief, the '173 Patent is valid and enforceable.

59. Upon information and belief, in violation of 35 U.S.C. § 271(a), Casper has directly infringed, and continues to directly infringe, the '173 Patent, either literally and/or under the doctrine of equivalents, by making in the United States and/or having made by others under contract in the United States Casper Wave mattresses in satisfaction of the limitations of one or more claims of the '173 Patent.

60. Exemplary independent Claim 5 of the '173 Patent recites the following:

[Preamble] A method of manufacturing a mattress comprising:

[1] providing a body of foam shaped and sized for use as a mattress;

[2] locating a region of the body where increased support is desired;

[3] forming a channel into the body within the region; and

[4] affixing an insert into the channel, the insert having a greater firmness than the body of foam;

[5] wherein forming the channel comprises assembling a plurality of rectangular foam pieces into a mattress that includes the channel.

61. Upon information and belief, Casper and/or one or more of its contract manufacturer(s) performs a method of manufacturing a mattress comprising all steps of at least Claim 5 of the '173 Patent.

62. Upon information and belief, at least Jeffco performs a method of manufacturing a mattress comprising all steps of at least Claim 5 of the '173 Patent under contract with and on behalf of Casper.

63. To the extent the Preamble of Claim 5 of the '173 Patent is considered to be a limitation, the Preamble is satisfied because the manufacturer of the Casper Wave mattress performs a method of manufacturing a mattress.

64. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 1 of Claim 5, because it includes a step of providing a body of foam shaped and sized for use as a mattress. Specifically, as depicted in **Figure 16** below, the Casper Wave mattress is comprised of five foam layers.

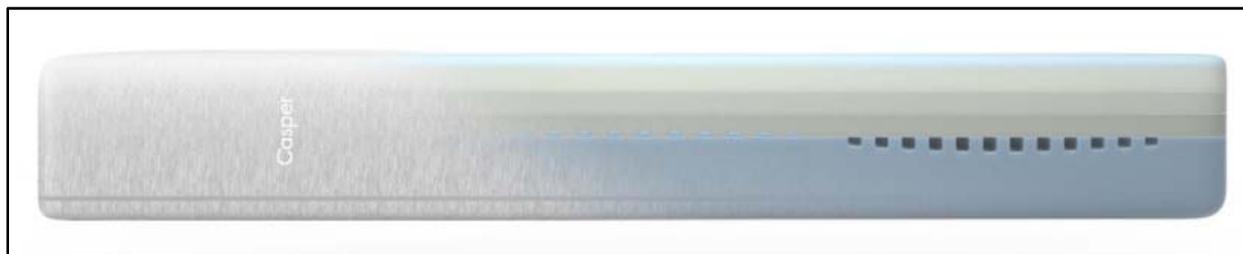


Figure 16

The Casper Wave mattress as a whole and, accordingly, the five foam layers, both individually and collectively, are shaped and sized for use as a mattress, consistent with well-known mattress sizes. See Exhibit 14 (<https://casper.com/mattress-size-comparison-guide>). Casper's identification of these sizes is depicted in **Figure 17**.



Figure 17

65. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 2 of Claim 5, because it includes a step of locating a region of the body where increased support is desired. Specifically, as shown in **Figure 18**, Casper identifies “the curves of your back and hips” as a region of the body “where you need” “more support”/“firmer support.”



Figure 18

As depicted in **Figure 19**, the Casper website also identifies “your back and hips” as a “zone[] where your body needs” “targeted firmness”/“extra support.” Exhibit 15 (<https://casper.com/faqs/the-mattress/how-does-the-natural-geometry-system-improve-sleep>).

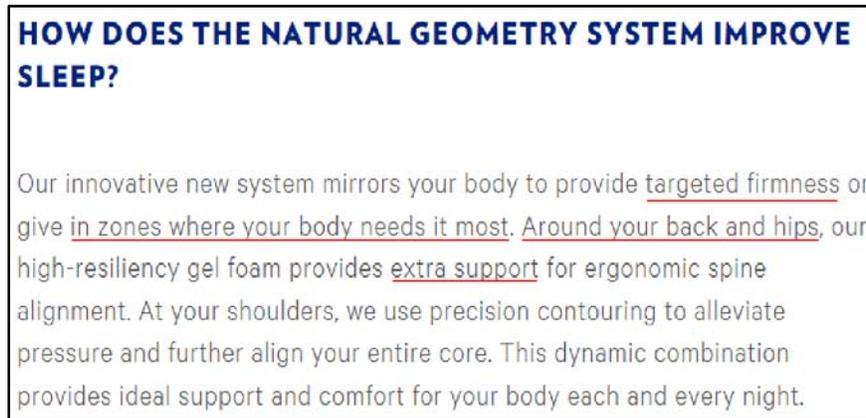


Figure 19

66. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 3 of Claim 5, because it includes a step of forming a channel into the body within the region. Specifically, as depicted in **Figure 20**, during manufacturing of the Casper Wave mattress, a channel (indeed multiple channels) is formed in the high resiliency foam layer.

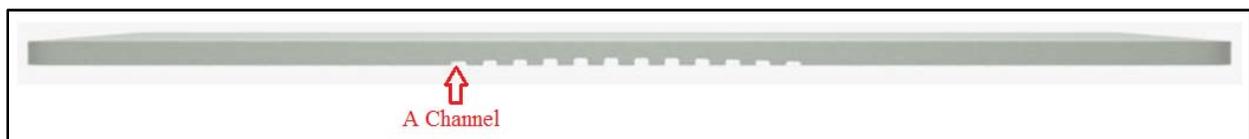


Figure 20

67. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 4 of Claim 5, because it includes a step of affixing an insert into the channel, the insert having a greater firmness than the body of foam. Specifically, as shown in **Figure 21**, during manufacturing of the Casper Wave mattress, a “Polymer Network” of inserts is affixed in the channels in the “High Resiliency Foam” layer.



Figure 21

As depicted in **Figure 22**, Casper describes the inserts as a “reinforced polymer network” that provides “firmer support.”



Figure 22

68. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of the wherein clause [5] of Claim 5, because the forming the channel step 2 comprises a step of assembling a plurality of rectangular foam pieces into a mattress that includes the channel. Specifically, as shown in **Figures 23 and 24**, during manufacturing of the Casper Wave mattress, five rectangular foam pieces are assembled into a mattress that includes the channel.

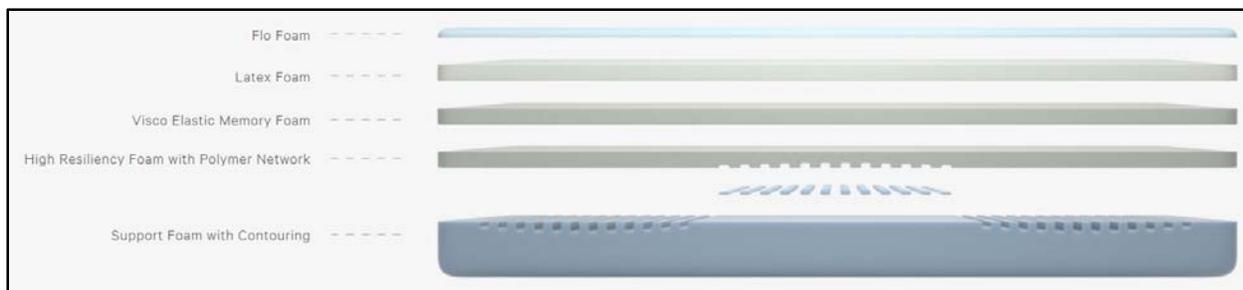


Figure 23



Figure 24

69. Plaintiffs have given Casper notice of its infringement at least by virtue of service or acknowledged delivery of this Complaint.

70. Plaintiffs have been and continue to be damaged by Casper's infringement of the '173 Patent. Plaintiffs are entitled to money damages in an amount adequate to compensate Plaintiffs for Casper's infringement, but in no event less than a reasonable royalty for the use made of the invention by Casper, together with interest and costs as fixed by the Court.

71. Plaintiffs have been and continue to be irreparably harmed by Casper's infringement of the '173 Patent such that money damages cannot sufficiently compensate for such irreparable harm. Unless preliminary and permanent injunctive relief is granted enjoining Casper and its agents, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '173 Patent, Plaintiffs will continue to be greatly and irreparably harmed.

THIRD CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 7,036,173
(35 U.S.C. § 271(g))

72. Plaintiffs incorporate the foregoing allegations as if fully realleged and restated herein.

73. Upon information and belief, the '173 Patent is valid and enforceable.

74. Upon information and belief, in violation of 35 U.S.C. § 271(g), Casper has directly infringed, and continues to directly infringe, the '173 Patent, either literally and/or under the doctrine of equivalents, by offering for sale and selling in the United States Casper Wave mattresses, which are manufactured by a method that satisfies the limitations of one or more claims of the '173 Patent.

75. Exemplary independent Claim 5 of the '173 Patent recites the following:

[Preamble] A method of manufacturing a mattress comprising:

[1] providing a body of foam shaped and sized for use as a mattress;

[2] locating a region of the body where increased support is desired;

[3] forming a channel into the body within the region; and

[4] affixing an insert into the channel, the insert having a greater firmness than the body of foam;

[5] wherein forming the channel comprises assembling a plurality of rectangular foam pieces into a mattress that includes the channel.

76. Upon information and belief, Casper offers for sale and sells the Casper Wave mattress, which is manufactured by a method comprising all steps of at least Claim 5 of the '173 Patent.

77. To the extent the Preamble of Claim 5 of the '173 Patent is considered to be a limitation, the Preamble is satisfied because the manufacturer of the Casper Wave mattress performs a method of manufacturing a mattress.

78. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 1 of Claim 5, because it includes a step of providing a body of foam shaped and sized for use as a mattress. Specifically, as shown in **Figure 25**, the Casper Wave mattress is comprised of five foam layers.

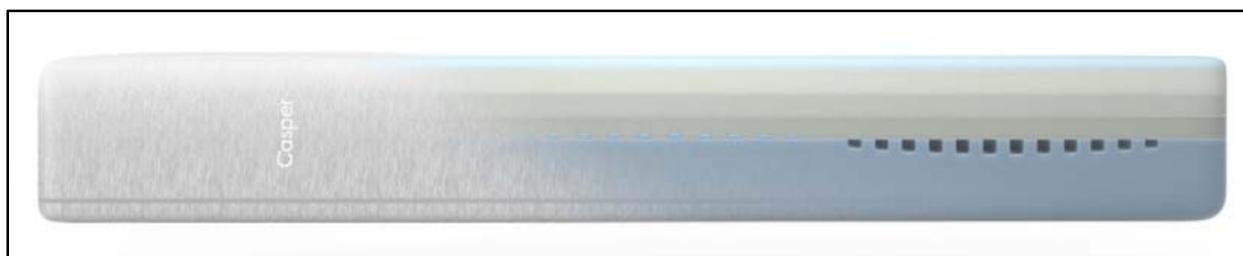


Figure 25

The Casper Wave mattress as a whole and, accordingly, the five foam layers, both individually and collectively, are shaped and sized for use as a mattress, consistent with well-known mattress sizes, as depicted in **Figure 26**.



Figure 26 (<https://casper.com/mattress-size-comparison-guide/>)

79. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 2 of Claim 5, because it includes a step of locating a region of the body where increased support is desired. Specifically, as shown in **Figure 27**, Casper identifies “the curves of your back and hips” as a region of the body “where you need” “more support”/“firmer support.”



Figure 27

The Casper website also identifies “your back and hips” as a “zone[] where your body needs” “targeted firmness”/“extra support” (**Figure 28**).

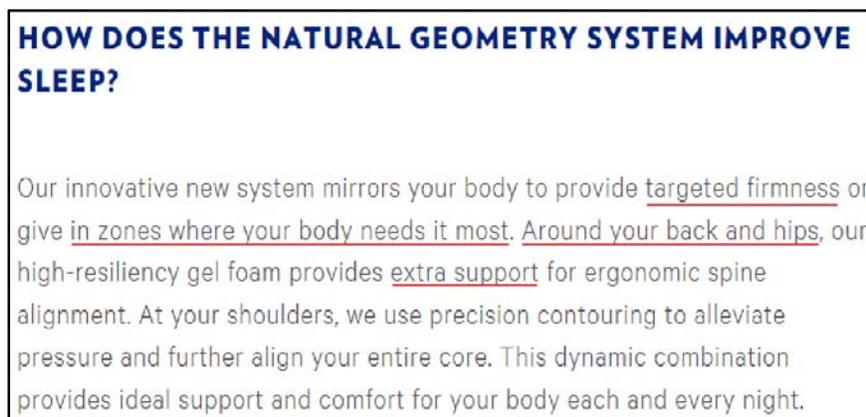


Figure 28 (<https://casper.com/faqs/the-mattress/how-does-the-natural-geometry-system-improve-sleep>)

80. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 3 of Claim 5, because it includes a step of forming a channel into the body within the region. Specifically, as depicted in **Figure 29**, during manufacturing of the Casper Wave mattress, a channel (indeed multiple channels) is formed in the high resiliency foam layer.



Figure 29

81. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 4 of Claim 5, because it includes a step of affixing an insert into the channel—the insert having a greater firmness than the body of foam. Specifically, as shown in **Figure 30**, during manufacturing of the Casper Wave mattress, a “Polymer Network” of inserts is affixed in the channels in the “High Resiliency Foam” layer.



Figure 30

As shown in **Figure 31**, Casper describes the inserts as a “reinforced polymer network” that provides “firmer support.”



Figure 31

82. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of the wherein clause [5] of Claim 5, because the forming the channel step 2 comprises a step of assembling a plurality of rectangular foam pieces into a mattress that includes the channel. Specifically, as depicted in **Figures 32 and 33**, during manufacturing of the Casper Wave mattress five rectangular foam pieces are assembled into a mattress that includes the channel.

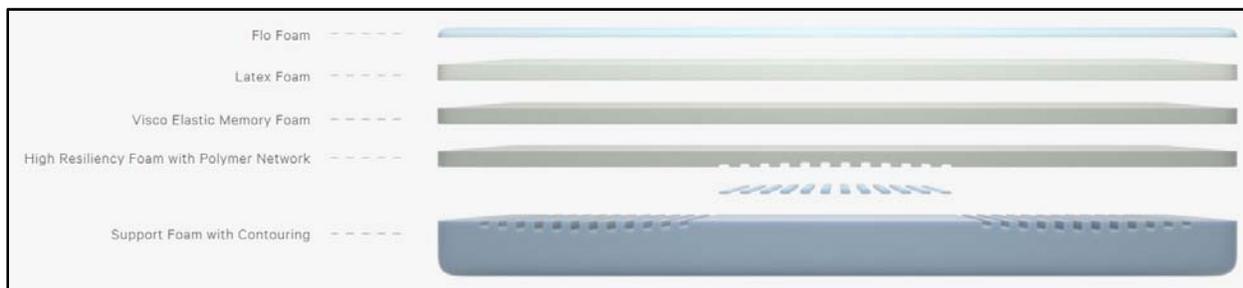


Figure 32



Figure 33

83. Plaintiffs have given Casper notice of its infringement at least by virtue of service or acknowledged delivery of this Complaint.

84. Plaintiffs have been and continue to be damaged by Casper's infringement of the '173 Patent. Plaintiffs are entitled to money damages in an amount adequate to compensate Plaintiffs for Casper's infringement, but in no event less than a reasonable royalty for the use made of the invention by Casper, together with interest and costs as fixed by the Court.

85. Plaintiffs have been and continue to be irreparably harmed by Casper's infringement of the '173 Patent such that money damages cannot sufficiently compensate for such irreparable harm. Unless preliminary and permanent injunctive relief is granted enjoining Casper and its agents, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '173 Patent, Plaintiffs will continue to be greatly and irreparably harmed.

FOURTH CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 8,918,935
(35 U.S.C. § 271(a))

86. Plaintiffs incorporate the foregoing allegations as if fully realleged and restated herein.

87. Upon information and belief, the '935 Patent is valid and enforceable.

88. Upon information and belief, in violation of 35 U.S.C. § 271(a), Casper has directly infringed, and continues to directly infringe, the '935 Patent, either literally and/or under the doctrine of equivalents, by making in the United States and/or having made by others under contract in the United States Casper Wave mattresses in satisfaction of the limitations of one or more claims of the '935 Patent.

89. Exemplary independent Claim 10 of the '935 Patent recites:

[Preamble] A method of manufacturing a mattress comprising:

[1] providing a plurality of rectangular foam pieces to form a body of foam shaped and sized for use as a mattress;

[2] locating a region of the body where increased support is desired;

[3] assembling the rectangular foam pieces to form the body having a channel in the region; and

[4a] affixing at least one insert having planar top and bottom surfaces into the channel, **[4b]** wherein the channel has a physical shape configured to receive the at least one insert, **[4c]** the insert having a different mechanical property than the body of the foam, and **[4d]** wherein the insert does not entirely fill the channel.

90. Upon information and belief, Casper and/or one or more of its contract manufacturers performs a method of manufacturing a mattress comprising all steps of at least Claim 10 of the '935 Patent.

91. Upon information and belief, at least Jeffco performs a method of manufacturing a mattress comprising all steps of at least Claim 10 of the '935 Patent under contract with and on behalf of Casper.

92. To the extent the Preamble of Claim 10 of the '935 Patent is considered to be a limitation, the Preamble is satisfied because the manufacturer of the Casper Wave mattress performs a method of manufacturing a mattress.

93. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 1 of Claim 10, because it includes a step of providing a plurality of rectangular foam pieces to form a body of foam shaped and sized for use as a mattress. Specifically, as shown in **Figure 34**, the Casper Wave mattress is comprised of five foam layers.

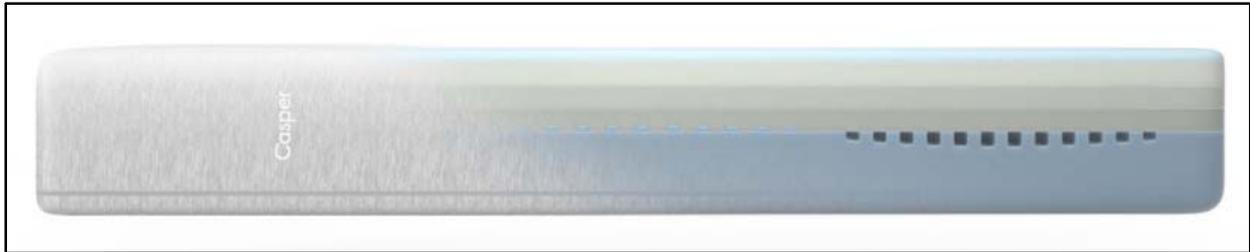


Figure 34

The Casper Wave mattress as a whole and, accordingly, the five foam layers, both individually and collectively, are shaped and sized for use as a mattress, consistent with well-known mattress sizes, as depicted in **Figure 35**.



Figure 35 (<https://casper.com/mattress-size-comparison-guide/>)

94. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 2 of Claim 10, because it includes a step of locating a

region of the body where increased support is desired. Specifically, as shown in **Figure 36**, Casper identifies “the curves of your back and hips” as a region of the body “where you need” “more support”/“firmer support.”



Figure 36

As depicted in **Figure 37**, the Casper website also identifies “your back and hips” as a “zone[] where your body needs” “targeted firmness”/“extra support.”



Figure 37 (<https://casper.com/faqs/the-mattress/how-does-the-natural-geometry-system-improve-sleep>)

95. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 3 of Claim 10, because it includes a step of assembling

the rectangular foam pieces to form the body having a channel in the region. Specifically, as shown in **Figure 38**, the five foam layers of the Casper Wave mattress are assembled to form the body having a channel in the region of the hips and lower back.

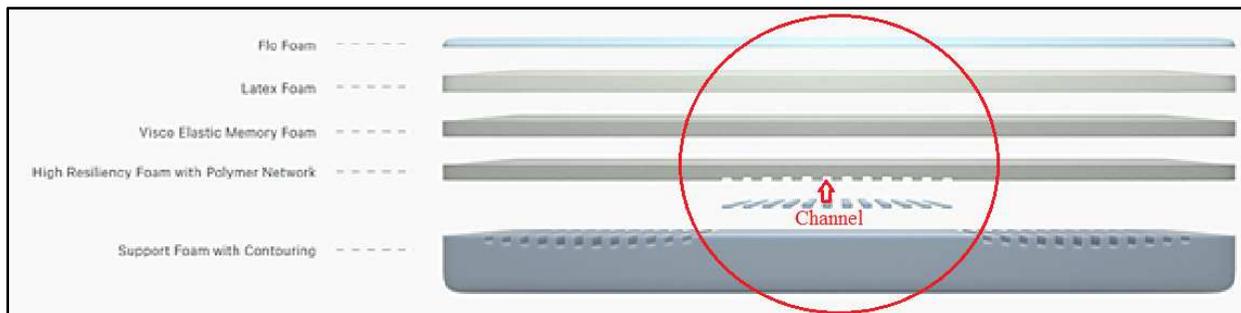


Figure 38

96. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 4a of Claim 10, because it includes a step of affixing at least one insert having planar top and bottom surfaces into the channel. Specifically, as shown in **Figure 39**, each of the inserts comprising the “Polymer Network” is affixed within one of the plurality of channels formed in the “High Resiliency Foam” layer.



Figure 39

As depicted in **Figure 40** below, the inserts have planar top and bottom surfaces.

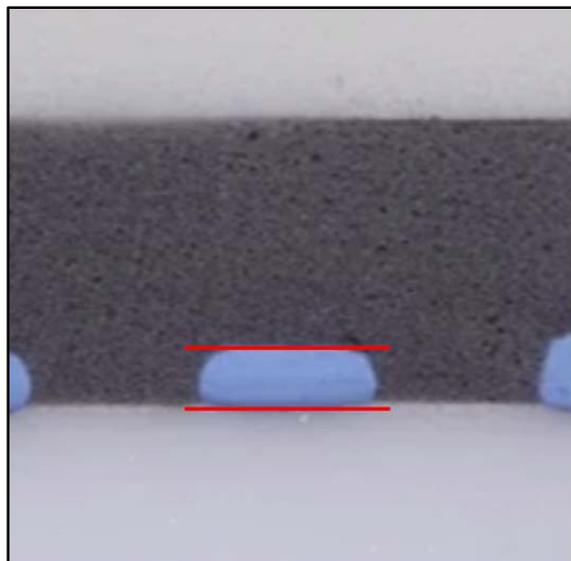


Figure 40

97. Upon information and belief, the method for manufacturing the Casper Wave mattress includes limitation 4b of Claim 10, because the channels have a physical shape configured to receive the at least one insert.

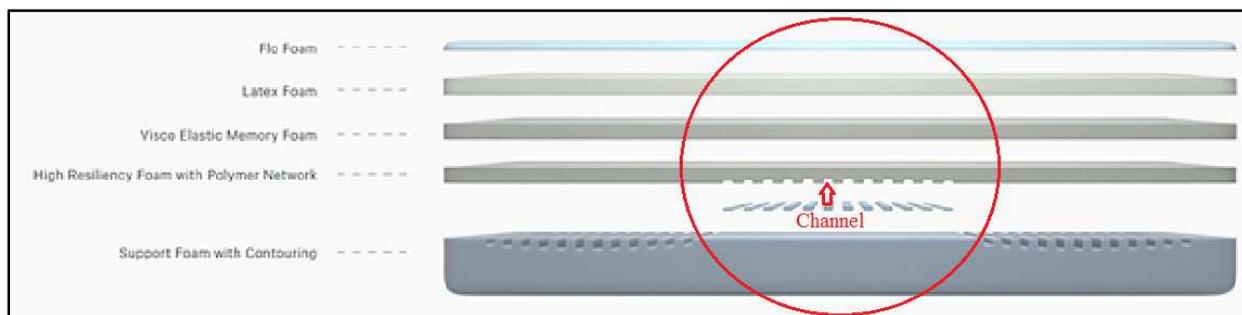


Figure 41

98. On information and belief, the Casper Wave mattress is manufactured by a method comprising step 4c of Claim 10 because it includes inserts having a different mechanical property than the body of the foam. Specifically, as depicted in **Figure 42**, the inserts are firmer than the body of the foam.



Figure 42

99. On information and belief, the Casper Wave mattress is manufactured by a method comprising step 4d of Claim 10 because it includes inserts that do not entirely fill their respective channels. For example, as shown in **Figure 43**, the inserts that form the polymer network do not fill channel. *See also* Exhibit 16.



Figure 43

100. Plaintiffs have given Casper notice of its infringement at least by virtue of service or acknowledged delivery of this Complaint.

101. Plaintiffs have been and continue to be damaged by Casper's infringement of the '935 Patent. Plaintiffs are entitled to money damages in an amount adequate to compensate Plaintiffs for Casper's infringement, but in no event less than a reasonable royalty for the use made of the invention by Casper, together with interest and costs as fixed by the Court.

102. Plaintiffs have been and continue to be irreparably harmed by Casper's infringement of the '935 Patent such that money damages cannot sufficiently compensate for such irreparable harm. Unless preliminary and permanent injunctive relief is granted enjoining Casper and its agents, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '935 Patent, Plaintiffs will continue to be greatly and irreparably harmed.

FIFTH CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 8,918,935
(35 U.S.C. § 271(g))

103. Plaintiffs incorporate the foregoing allegations as if fully realleged and restated herein.

104. Upon information and belief, the '935 Patent is valid and enforceable.

105. Upon information and belief, in violation of 35 U.S.C. § 271(g), Casper has directly infringed, and continues to directly infringe, the '935 Patent, either literally and/or under the doctrine of equivalents, by offering for sale and selling in the United States Casper Wave mattresses, which are manufactured by a method that satisfies the limitations of one or more claims of the '935 Patent.

106. Exemplary independent Claim 10 of the '935 Patent recites:

[Preamble] A method of manufacturing a mattress comprising:

[1] providing a plurality of rectangular foam pieces to form a body of foam shaped and sized for use as a mattress;

[2] locating a region of the body where increased support is desired;

[3] assembling the rectangular foam pieces to form the body having a channel in the region; and

[4a] affixing at least one insert having planar top and bottom surfaces into the

channel, [4b] wherein the channel has a physical shape configured to receive the at least one insert, [4c] the insert having a different mechanical property than the body of the foam, and [4d] wherein the insert does not entirely fill the channel.

107. Upon information and belief, Casper offers for sale and sells the Casper Wave mattress, which is manufactured by a method comprising all steps of at least Claim 10 of the '935 Patent.

108. To the extent the Preamble of Claim 10 of the '935 Patent is considered to be a limitation, the Preamble is satisfied because the manufacturer of the Casper Wave mattress performs a method of manufacturing a mattress.

109. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 1 of Claim 10, because it includes a step of providing a plurality of rectangular foam pieces to form a body of foam shaped and sized for use as a mattress. Specifically, as depicted in **Figure 44**, the Casper Wave mattress is comprised of five foam layers.

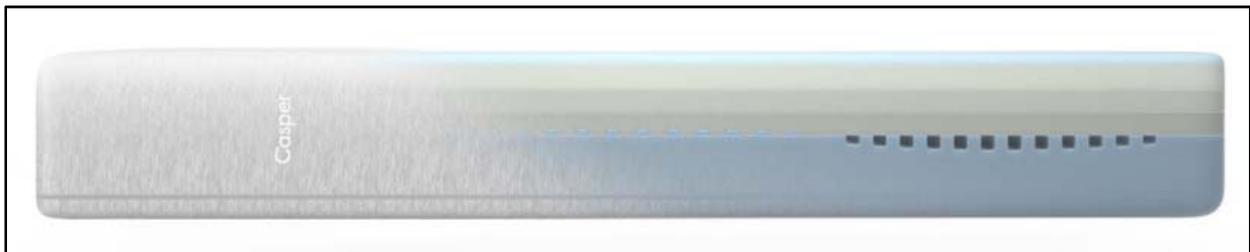


Figure 44

The Casper Wave mattress as a whole and, accordingly, the five foam layers, both individually and collectively, are shaped and sized for use as a mattress, consistent with well-known mattress sizes, as shown in **Figure 45**.



Figure 45 (<https://casper.com/mattress-size-comparison-guide/>)

110. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 2 of Claim 10, because it includes a step of locating a region of the body where increased support is desired. Specifically, as shown in **Figure 46**, Casper identifies “the curves of your back and hips” as a region of the body “where you need” “more support”/“firmer support.”



Figure 46

As shown in **Figure 47**, the Casper website also identifies “your back and hips” as a “zone[] where your body needs” “targeted firmness”/“extra support.”

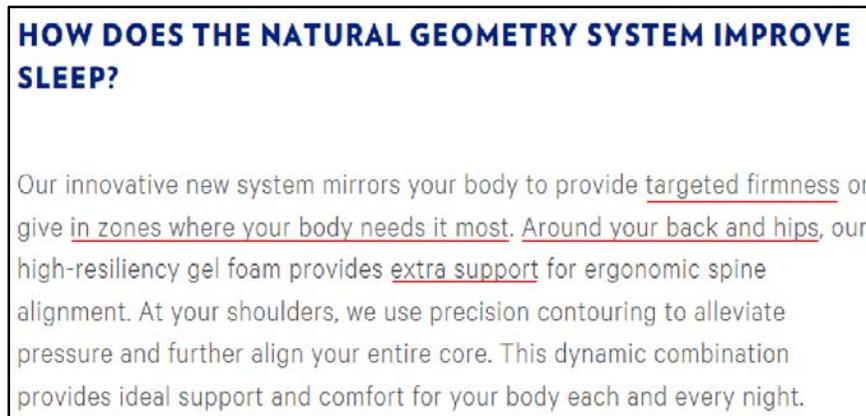


Figure 47 (<https://casper.com/faqs/the-mattress/how-does-the-natural-geometry-system-improve-sleep>)

111. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 3 of Claim 10, because it includes a step of assembling the rectangular foam pieces to form the body having a channel in the region. Specifically, as depicted in **Figure 48**, the five foam layers of the Casper Wave mattress are assembled to form the body having a channel in the region of the hips and lower back.

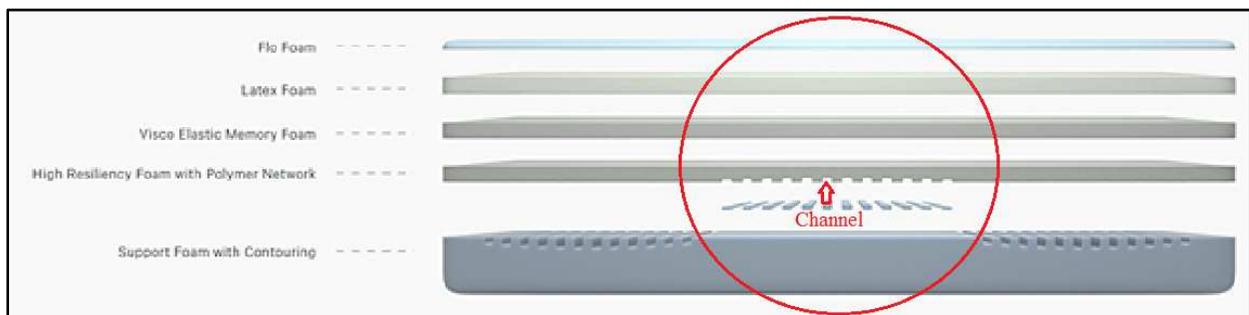


Figure 48

112. Upon information and belief, the method for manufacturing the Casper Wave mattress includes the performance of step 4a of Claim 10, because it includes a step of affixing at least one insert having planar top and bottom surfaces into the channel. Specifically, as shown in

Figure 49, each of the inserts comprising the “Polymer Network” is affixed within one of the plurality of channels formed in the “High Resiliency Foam” layer.



Figure 49

As depicted in **Figure 50** below, the inserts have planar top and bottom surfaces.

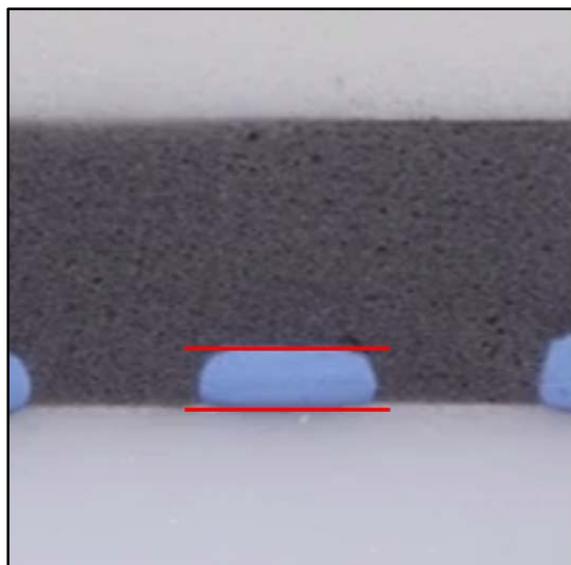


Figure 50

113. Upon information and belief, the method for manufacturing the Casper Wave mattress includes limitation 4b of Claim 10, because the channels have a physical shape configured to receive the at least one insert. As shown in **Figure 51**, the plurality of channels formed in the “High Resiliency Foam” layer includes channels that have a physical shape configured to receive the “Polymer Network.”

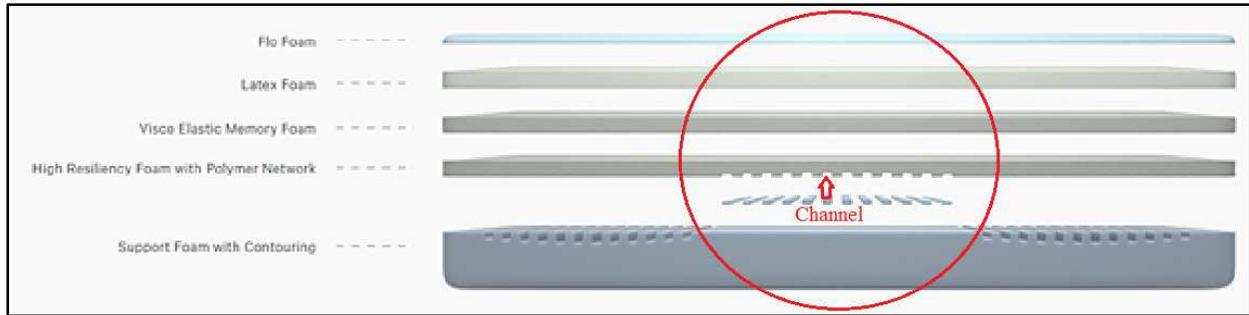


Figure 51

114. On information and belief, the Casper Wave mattress is manufactured by a method comprising step 4c of Claim 10 because it includes inserts having a different mechanical property than the body of the foam. Specifically, as shown in **Figure 52**, the inserts are firmer than the body of the foam.



Figure 52

115. On information and belief, the Casper Wave mattress is manufactured by a method comprising step 4d of Claim 10 because it includes inserts that do not entirely fill their respective channels. For example, as shown in **Figure 53**, the inserts that form the polymer network do not entirely fill their respective channels. *See also* Exhibit 16.

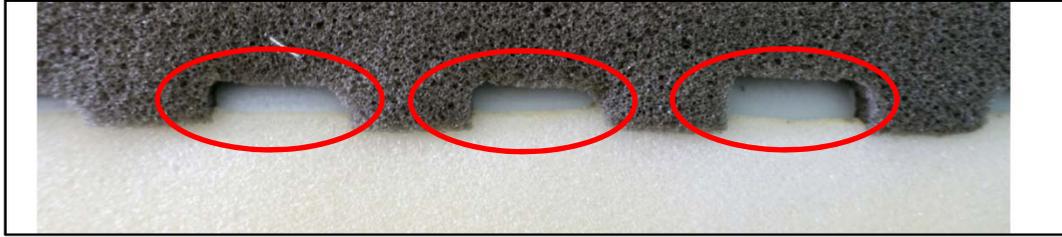


Figure 53

116. Plaintiffs have given Casper notice of its infringement at least by virtue of service or acknowledged delivery of this Complaint.

117. Plaintiffs have been and continue to be damaged by Casper's infringement of the '935 Patent. Plaintiffs are entitled to money damages in an amount adequate to compensate Plaintiffs for Casper's infringement, but in no event less than a reasonable royalty for the use made of the invention by Casper, together with interest and costs as fixed by the Court.

118. Plaintiffs have been and continue to be irreparably harmed by Casper's infringement of the '935 Patent such that money damages cannot sufficiently compensate for such irreparable harm. Unless preliminary and permanent injunctive relief is granted enjoining Casper and its agents, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '935 Patent, Plaintiffs will continue to be greatly and irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- a) That this Court enter a judgment that Casper has directly infringed and is directly infringing one or more claims of the '763, '173, and '935 Patents;
- b) That this Court enter a judgment and order preliminarily and permanently enjoining Casper, its employees and agents, and any person in active concert or participation

with Casper, from directly or indirectly infringing the '763, '173, and '935 Patents;

c) That this Court enter a judgment against Casper awarding damages to Plaintiffs for the direct infringement by Casper of the '763, '173, and '935 Patents, including any supplemental damages for any continuing post-verdict infringement until entry of a final judgment and cessation of such infringement;

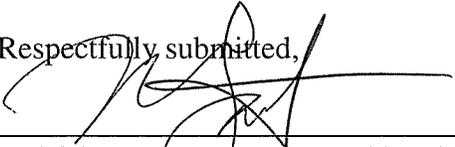
d) That this Court assess pre-judgment and post-judgment interest and costs against Casper, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284; and

e) That this Court grant Plaintiffs such other and further relief as the Court may deem just, proper, and equitable.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all matters so triable.

Respectfully submitted,



NICOLE M. JANTZI (No. 4095451)
McDERMOTT WILL & EMERY LLP
The McDermott Building
500 North Capitol Street NW
Washington, DC 20001

Telephone: (202) 756-8213
Facsimile: (202) 756-8087
Email: njantzi@mwe.com

Of Counsel:
PAUL M. SCHOENHARD (*pro hac vice* pending)
IAN B. BROOKS (*pro hac vice* pending)

DAVID MLAYER (*pro hac vice* pending)
ELIZABETH TETER (*pro hac vice* pending)
McDERMOTT WILL & EMERY LLP
The McDermott Building
500 North Capitol Street NW
Washington, DC 20001

Telephone: (202) 756-8000
Facsimile: (202) 756-8087
Email: pschoenhard@mwe.com
Email: ibrooks@mwe.com
Email: dmlaver@mwe.com
Email: eteter@mwe.com

COUNSEL FOR PLAINTIFFS
SERTA SIMMONS BEDDING, LLC AND
DREAMWELL, LTD.

September 29, 2017