

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN NATIONAL MANUFACTURING INC.,
Petitioner,

v.

SLEEP NUMBER CORPORATION
f/k/a SELECT COMFORT CORPORATION,
Patent Owner.

Case No. IPR2019-00500
Patent No. 9,737,154 B2

**DECLARATION OF ELIZABETH A. PATTON
IN SUPPORT OF PATENT OWNER'S RESPONSE**

I, Elizabeth A. Patton, declare as follows:

1. I am a partner at the law firm Fox Rothschild LLP, and I am one of the attorneys representing Sleep Number Corporation f/k/a Select Comfort Corporation (herein “Sleep Number”) in the above matter initiated by American National Manufacturing, Inc. (“ANM”). I have been admitted *pro hac vice*.

2. I have first-hand knowledge of the information stated in this Declaration, which I submit in support of Patent Owner’s Response.

3. I am a senior member of the team representing Patent Owner in the following IPR proceedings: IPR2019-00497 (U.S. Pat. No. 8,769,747), IPR2019-00500 (U.S. Pat. No. 9,737,154), and IPR2019-00514 (U.S. Pat. No. 5,904,172). I am also a senior member of the team representing Patent Owner in the following related district court cases (“District Court Case”): *Sleep Number Corporation v. American National Manufacturing Inc.*, 5:18-cv-00357(AB)(SPx) (C.D. Cal. 2018) and *Sleep Number Corporation v. Sizewise Rentals, LLC*, 5:18-cv-00356(AB)(SPx) (C.D. Cal. 2018).

4. Additionally, I am a senior member of the team representing Sleep Number Corporation in the following district court case involving ANM’s related company and Real-Party-in-Interest Dires, LLC (“Dires Case”): *Sleep Number Corporation, et al. v. John Baxter, et al.*, 12-cv-2899-DWF-SER (D. Minn. 2012), *on appeal, Sleep Number Corporation, et al. v. John Baxter, et al.*, 19-1077 (8th Cir.

2019). In September of 2017, a trial was conducted in the Dires Case. During the trial, ANM President Craig Miller Jr. testified at length regarding facts related to Sleep Number's claims in the litigation, including the false statements Sleep Number alleged ANM had made to consumers, many of which involved statements pertaining to Sleep Number.

5. The testimony elicited during the trial in the Dires Case was publicly filed on the docket as full page transcripts at Docket Entries 586-588. Exhibit 2034 is a true and correct copy of excerpts of Volumes VI–VIII of the trial testimony in minuscrit form, which includes all of Craig Miller's trial testimony conducted on September 29, 2017, October 2, 2017, and October 3, 2017.

6. During the trial in the Dires Case, the parties entered thousands of exhibits into evidence. Although those exhibits were not publicly filed on the docket, they became publicly available at the conclusion of the trial when the parties did not request any confidentiality designations or restrictions from public access (with the exception of certain customer communications not being submitted in this proceeding). In addition, those exhibits were later provided to the Eighth Circuit Court of Appeals, again under no confidentiality designations or restrictions from public access.

7. Exhibit 2035 is a true and correct copy of Plaintiff's Exhibit 730 from the Dires Case trial, which are materials produced by Dires that include instructions

from Craig Miller regarding training. Exhibit 2036 is a true and correct copy of Defendant's Exhibits 212, 213, and 215 and Plaintiff's Exhibits 716 and 718 from the Dires Case trial, which are emails produced by Dires that illustrate the training of its employees.

8. Exhibit 2037 is a true and correct copy of Defendant's Exhibits 172 and 174 from the Dires Case trial, which is the Agreement and an Amendment to the Agreement between Select Comfort Corporation and American National Manufacturing, Inc., dated August 11, 2006 and January 22, 2009 respectively.

9. I am aware from non-confidential, public documents, testimony, and information in the Dires Case and from Dires' website at <https://www.personalcomfortbed.com/the-original-number-bed> (a true and correct copy of which is Exhibit 2038) that:

a. ANM purchased the Instant Comfort brand name of adjustable air beds in July 2006.

b. ANM was subject to a non-compete agreement with Sleep Number from August 2006 through November 2011. This non-compete agreement prohibited ANM and its President, Craig Miller, from selling consumer adjustable air beds, except in small numbers to a small number of existing customers—specifically no more than 100 beds to each existing customer—thus limiting ANM's distribution of adjustable air beds. Dires

refers to the non-compete on the website referenced above as causing a “limited distribution of adjustable firmness mattresses.”

c. According to his testimony at trial, after the expiration of this non-compete agreement, Craig Miller intended to take ANM’s Instant Comfort brand direct to the consumer.

d. In early 2012, he helped form an entity called Dires, LLC, at which he testified his title is Managing member and co-founder.

e. Dires has been identified as a Real-Party-in-Interest in these IPR proceedings. Dires describes itself as a sister company to ANM and describes both ANM and Real-Party-in-Interest Sizewise Rentals, LLC as its parent company.

f. Dires has sold adjustable air beds manufactured by ANM directly to consumers since September 2012.

10. Sleep Number accuses ANM’s consumer air beds and Dires’ consumer air beds of patent infringement in the District Court Case—more specifically, that the beds have been sold with certain accused air controllers and certain accused source code. I understand Dr. John Abraham and Dr. George Edwards are submitting declarations (Exhibits 2027, 2029) in support of Patent Owner’s Response stating their opinions that ANM’s, and thus Dires’, consumer air beds copy Sleep Number’s patents and consumer air beds.

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