

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN NATIONAL MANUFACTURING INC.,
Petitioner,

v.

SELECT COMFORT CORPORATION,
Patent Owner.

Case No. IPR2019-00497

Case No. IPR2019-00500

Patent No. 8,769,747

Patent No. 9,737,154

**DECLARATION OF DR. WILLIAM C. MESSNER
IN SUPPORT OF PATENT OWNER'S MOTIONS TO AMEND**

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I. BACKGROUND

I, William C. Messner, make this Declaration in connection with the Patent Owner's Motions to Amend U.S. Patent 8,769,747 (the '747 Patent) and U.S. Patent 9,737,154 (the '154 Patent). Specifically, this Declaration is submitted with the Patent Owner's Revised Motion to Amend in Case No. IPR2019-00497 involving the '747 Patent and the Reply in Support of Patent Owner's Motion to Amend in Case No. IPR2019-00500 involving the '154 Patent. To that end, I hereby declare as follows:

1. I am over the age of 21 years and am fully competent to make this Declaration. I make the following statements based on personal knowledge and, if called to testify to them, could and would do so. I have been retained on behalf of Sleep Number Corporation to opine on certain issues raised in the above-identified proceedings concerning the '747 Patent and the '154 Patent. My fee is not contingent on the outcome of any matter or on any of the technical positions that I explain in this Declaration. I have no financial interest in Sleep Number Corporation, nor the '747 and '154 Patents.

2. This Declaration is intended to be read with my prior declarations in support of the Patent Owner's Responses (Exs. 2001 and 2025 in IPR2019-00497 and Exs. 2001 and 2025 in IPR2019-00500; "Companion Declarations"). In my Companion Declarations, I address many topics, including my background and

qualifications, the level of skill in art, a background on the technology of the patents at issue, claim construction, and many other topics. I maintain all of the opinions and explanations expressed in my Companion Declarations, and all that I testified to in those documents applies equally here.

3. In preparing this declaration, and in addition to the information I reviewed when preparing my Companion Declarations, (*see, e.g.*, Ex. 2025 at ¶¶ 15-16), I have reviewed Patent Owner’s Motion to Amend in IPR2019-00500 and Patent Owner’s Revised Motion to Amend in IPR2019-00497. I have also reviewed Petitioner’s Oppositions to Patent Owner’s Motions to Amend in both IPR2019-00497 and -00500 (“Opp.”) and the supporting evidence submitted therewith as well as the transcript from the deposition of ANM’s expert, Dr. Phinney, from February 20, 2020 (Ex. 2080). I have also reviewed the Board’s preliminary guidance in both IPR2019-00497 and -00500.

II. THE UNDERSTANDINGS APPLIED TO MY ANALYSIS

4. Based upon my review of the Petitions and Oppositions to Patent Owner’s Motions to Amend that were filed by Petitioner, it is my understanding that at least Gifft, Mittal, and Pillsbury are used to argue the proposed substitute claims are unpatentable. Specifically, I understand that Petitioner relies upon at least Gifft, Mittal, and Pillsbury (requiring Ebel for most of its combination) to argue the proposed substitute claims in IPR2019-00500 are unpatentable. I further understand

that because Patent Owner is filing a Revised Motion to Amend in IPR2019-00497, Petitioner is not confined to using these same references in its Opposition to Patent Owner's Revised Motion to Amend. However, given Dr. Phinney's admission that other than Ebel's purported disclosures he is unaware of any art that discloses use of a multiplicative offset, I expect Petitioner will continue to use the same combinations in its Opposition to Patent Owner's Revised Motion to Amend.

5. In addition to the understandings outlined in my Companion Declarations (¶¶17-26 of Ex. 2001 in IPR2019-00497 and IPR2019-00500), Counsel has informed me that claims must be enabled by the original disclosure of the patent. For the claims to be enabled, the information contained in the disclosure must be sufficient to inform those skilled in the relevant art how to make and use the claimed invention without undue experimentation. I do not offer any opinions in this Declaration concerning enablement, and merely note my understanding of the concept to support the following discussion.

6. Counsel has informed me that the original disclosure must contain a written description of the claimed invention. The written description requirement is separate and distinct from the enablement requirement I discussed above. To satisfy the written description requirement, the original disclosure must describe (in writing or drawings) the claimed invention in sufficient detail that one skilled in the art can reasonably conclude the inventor had possession of the claimed invention. In other

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