

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

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”).

2. I have first-hand knowledge of the information stated in this Affidavit, which I submit in support of Patent Owner’s Motion for Additional Discovery and to Waive the Word Count for the Parties’ Response, Reply, and Sur-Reply.

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). Additionally, I am a senior member of the team representing Sleep Number Corporation in the following district court case involving a related company of ANM (“Dires Case”): *Sleep Number Corp., et. al. v. John Baxter, et. al.*, 12-cv-2899-DWF-SER (D. Minn. 2012).

4. 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> 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 Jr., from selling consumer adjustable air beds, except in small numbers to a small number of existing customers.
 - c. After the expiration of this non-compete agreement, Craig Miller intended to take ANM's Instant Comfort brand direct to the consumer. He helped form an entity called Dires, LLC ("Dires"), at which I understand he continues to have a senior position. 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 ANM and Real-Party-in-Interest Sizewise Rentals, LLC as its parent company.
 - d. Dires has sold adjustable air beds manufactured by ANM directly to consumers since September 2012.
5. Sleep Number accuses ANM's consumer air beds and Dires' consumer

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air beds of patent infringement in the District Court Case—more specifically, that the beds are sold with accused air controllers and accused source code. As depicted on ANM’s website, ANM’s adjustable air beds are branded as “Instant Comfort” beds: <https://www.instantcomfort.com/>. As depicted on Dires’ website, Dires’ adjustable air beds are branded as “Personal Comfort” beds: <https://www.personalcomfortbed.com/>.

6. I understand from basic internet research, including on ANM’s website, that since 2012 ANM has expanded to retailers other than Dires and that those retailers sell ANM’s Instant Comfort adjustable air beds at a number of physical retail locations across the country as well as on those retailer’s websites. As just one example, when searching for retailers of Instant Comfort beds within 200 miles of Detroit, Michigan, I found over 50 results:

Find a Store Near


Detroit, Michigan Within 200 mi **Search**

ABC Warehouse
15253 Michigan Ave
Dearborn, MI 48126
[Directions](#)

ABC Warehouse
7215 E 10 Mile Rd
Center Line, MI 48015
[Directions](#)

ABC Warehouse
18605 Eureka Rd
Southgate, MI 48195
[Directions](#)

ABC Warehouse
24725 Southfield Rd
Southfield, MI 48075



Become an Instant Comfort Retailer

See <https://www.instantcomfort.com/find-a-store/>. Based upon searches in other major metropolitan areas, it appears ANM is selling Instant Comfort beds at over 100 retail locations across the country.

7. I believe evidence of ANM’s sales, particularly to a likely increased number of retailers throughout the country, will directly bear on secondary considerations like copying and commercial success.

I declare under penalty of perjury that the foregoing is true and correct.

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