

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

**DECLARATION OF CRAIG S. MILLER, JR. IN SUPPORT OF
PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION FOR
ADDITIONAL DISCOVERY**

WA 13785030.1

I, Craig Miller Jr., declare and state as follows:

1. I am the President of Petitioner American National Manufacturing, Inc. and am familiar with the allegations that have been put forward by Sleep Number Corporation f/k/a Select Comfort Corporation (“Sleep Number”) in seeking additional discovery. I make this declaration to correct several misstatements that have been made by Sleep Number to the Board regarding my interactions with Sleep Number.

2. Since 1996, American National Manufacturing Inc. has been manufacturing a full line of air adjustable mattresses under the American National Brand and later in the Dreamworks brand and Instant Comfort brand as well as other private label brand air mattresses including the Nautilus Sleep System. Effectively, all of the beds sold then and now generally included air control units; however, the primary driving factor for the consumer in the sale of these products is the mattresses

3. In March 2006, Kirk Stoa of Select Comfort approached me and asked if I would consider working with them rather than against them. During the discussion, he asked if I would consider providing technical consultation regarding product development. At the time, Sleep Number had significant product failures related to the structural integrity of the air chambers in their product lines. Specifically, Sleep Number’s air chambers tended to fail in ways related to the

sealing of their air chambers. In addition, the overall construction of their air mattresses created issues with “rolling to the middle,” where a user would slide into the middle area between two air chambers placed side-by-side. This was in addition to significant and widespread reports of mold and mildew which formed on their air chambers. The latter issue related to mold and mildew led to class action lawsuit against Sleep Number which was covered in the news media, for example a 2008 Consumerist article which may be found at <https://consumerist.com/2008/05/17/the-sleep-number-difference-is-mold/>. As American National did not have these problems, Sleep Number had hoped that I would be able to share my technical knowhow on mattress construction and my relationships with component manufacturers within the industry to address these issues. They promised me to pay a significant amount money for my expertise and —we settled on \$1.25 million for 3 years with automatic one (1) year extensions at the rate of \$500,000.00 per year.

4. Exhibit 2037 is a copy of the consultant contract that Sleep Number offered me. As the discussions regarding consulting evolved, I was surprised when the scope went beyond me simply providing technical assistance—one of the provisions expressly barred myself and American National Manufacturing from selling any additional consumer air mattresses during the period of the consultancy beyond the list of pre-existing customers which we had prior to signing the contract.

In short, we could not seek any new customers for our consumer air adjustable mattresses. I, however, was willing to accept that non-compete provision due the fact that American National Manufacturing Inc. had significant manufacturing presence in the *medical* air bed space, and that area was not covered by the non-compete. I also accepted the non-compete provision, because I believed at the time that Sleep Number would actually carry out their promise and pay me the full amount of the contract with automatic 1 year renewals and possible royalty streams as stated within the contract—that turned out to be false unfortunately. Regardless, I accepted the consultant role and signed the contract. This agreement essentially required that I abandon my business plans for launching and expanding a direct to consumer business featuring our air adjustable mattresses, with the exception of only selling to a few existing customers. Approximately 6 months after signing the original agreement which permitted American National to sell our Air Adjustable mattresses to certain customers on Exhibit A of the agreement, I was contacted by Kirk Stoa regarding two of our pre-existing customers on the agreed to Exhibit A. As it turned out Select Comfort had simply changed their mind and wanted us to make two concessions. Kirk told me that in the spirit of the agreement and our commitment to working together long term we are asking you to exit your agreement with AH Beard to make way for Select Comfort to enter the Australian market. Regrettably I agreed,

and we took back large amounts of product from AH Beard and issued them credit to help Select Comfort have a clear path to the Australian market. There was no additional compensation of any kind made for this concession; it was simply a good faith gesture on my part for what I thought was going to be a long term mutually beneficial relationship which turned out to be false. As demonstrated in Exhibit 1034, which is a true and correct copy of a business record from American National Manufacturing, the monthly direct to consumer sales by Nautilus, a company we acquired, were as high as [REDACTED] units per month before the consulting agreement, while current monthly sales of the accused consumer products have never reached those levels. Thus, this business has never fully recovered from the non-compete and from Sleep Number's other anticompetitive activities.

5. From 2006 to 2011, I provided my services to Sleep Number under the consultant agreement. I gave advice regarding the construction and configuration of their mattress components and how to manufacture air chambers to avoid issues of mold and other quality control issues.

6. I was never retained to provide any advice into the programming or configuration of their air controllers. That is due to the fact that I do not have any knowledge regarding computer code or how to program any of the electronic components. At no time have I or anyone else at American National Manufacturing

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.