

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. IPR2019-00514

Patent No. 5,904,172

DECLARATION OF CRAIG MILLER, JR.

WA 1418475801.2

WA 14231564.1

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

1. I am the President of Petitioner American National Manufacturing, Inc. (“ANM”) and am familiar with the allegations that have been put forward by Sleep Number Corporation f/k/a Select Comfort Corporation (“Sleep Number”). In addition, I am a managing member of Dires, LLC, a retailer of mattress systems manufactured and distributed by ANM. I have personal knowledge of the facts stated in this declaration. I make this declaration in response to the declaration of Carl G. Degen, dated October 23, 2019 (Exhibit 2055). My declaration presents facts that perhaps were not known to Mr. Degen and to correct assumptions made in his declaration.

2. Mr. Degen’s declaration includes calculations he made based on unit sales data produced by ANM in these IPR proceedings. The data is referred to by the parties as “raw data”. The raw data is in the form of a spreadsheet with columns which list each sale of a manifold, software (“source code”) and mattresses sold by ANM to its customers. The products sold are further described under the heading “description”. The further descriptions include pumps and air controllers (“controller”) and mattresses. ANM customers are identified as “Inner Company” and “Third Party”. (The raw data also distinguishes between sale of units for “consumer” and “medical” use.) The spreadsheet listing of units sold was created

from ANM invoices to its customers. For exemplary purposes, I have attached **Exhibit 1073** which shows each of the column headings.

3. Within the raw data, manifolds, source code and mattresses are identified as either “accused” or “not accused” based solely on whether Sleep Number alleges that the manifold reads on one of its patents. As to source codes, “accused” means only that the source code is associated with a manifold that Sleep Number accused. ANM purchased and resold controllers that included source code and it resold the controllers. Overtime, various versions of source code were included in the controllers purchased and resold by ANM. ANM is without any ability to distinguish between source code versions that it purchased from suppliers and resold. As to mattresses, “accused” means only that the mattress was sold with an accused manifold. ANM understands Sleep Number to contend that a mattress is accused if it was sold with an accused manifold.

4. My review of Mr. Degen’s declaration reveals that he organized ANM’s unit sales per the raw data spreadsheet into four time periods. Mr. Degen contends that his time periods 2 and 4 show substantial increases in ANM’s unit sales and Mr. Degen attributes those sales to ANM’s sale of accused manifolds and source code. In his deposition of January 8, 2020, Mr. Degen says he relied on the raw data which Sleep Number’s counsel provided to him, that he did not ask Sleep

Number's counsel to provide other information and he did not conduct independent research into any facts relevant to the unit sales stated on the raw data spreadsheet. In the following paragraphs, I state facts regarding the raw data that Mr. Degen may not have understood and facts regarding ANM's business and Sleep Number's anti-competitive conduct that Sleep Number may not have described to Mr. Degen.

5. Regarding his Period 1, Mr. Degen under-counted the number of controllers sold by ANM by [REDACTED]. This under-count occurred in connection with ANM sales of mattresses to Dires, LLC ("Dires"). Dires re-sells ANM mattress systems to consumers and each system includes at least one mattress and a controller. This is necessary because the controller is the device that inflates the mattress. Between August 2012 and late June or early July 2014, ANM invoices to Dires did not list the controllers separately from the mattress. The raw data entries come from ANM's invoice records, so the raw data reflected [REDACTED] mattresses without an accompanying controller, although, in fact, each mattress had a controller in the same delivery box. In addition, Mr. Degen over-counts the number of mattresses sold in his Period 1. ANM sold to Dires in Period 1 (carrying over for two months in Degen's Period 2) [REDACTED] split double mattresses (branded as split Eastern King or split California King). These split mattresses appear on the invoice as two mattresses

(for a total [REDACTED]) although, in fact, they are a split king mattress system with a single controller.

6. Another important fact related to Mr. Degen's Period 1 is that it corresponds with the conclusion of an agreement under which Sleep Number paid me and ANM to stay out of the adjustable firmness consumer bed market except for sales to a few pre-approved and existing customers. Accordingly, Period 1 sales reflect the time that ANM was starting to build awareness among consumers purchasing such beds and preparing for controlled and manageable growth.

7. Regarding Mr. Degen's Period 2, he likely over-counted the number of controllers sold by ANM that included source code accused by ANM. The controllers ANM sold in this Period were supplied with source code described by the supplier as a range of versions between version 1.5 and version 1.8. ANM had no information of which version was installed within any controller. Accordingly, ANM's raw data described the versions as 1.5-1.8. However, Sleep Number accuses only version 1.8 in Period 2. According to the raw data, there are more than 9,800 controllers with versions 1.5-1.8. ANM (and apparently, Mr. Degen) does not know how many are the accused version 1.8.

8. During Mr. Degen's Period 2, ANM changed the supplier of controllers from Arco to Providence. This change, in part, was due to production issues that

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