

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 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).

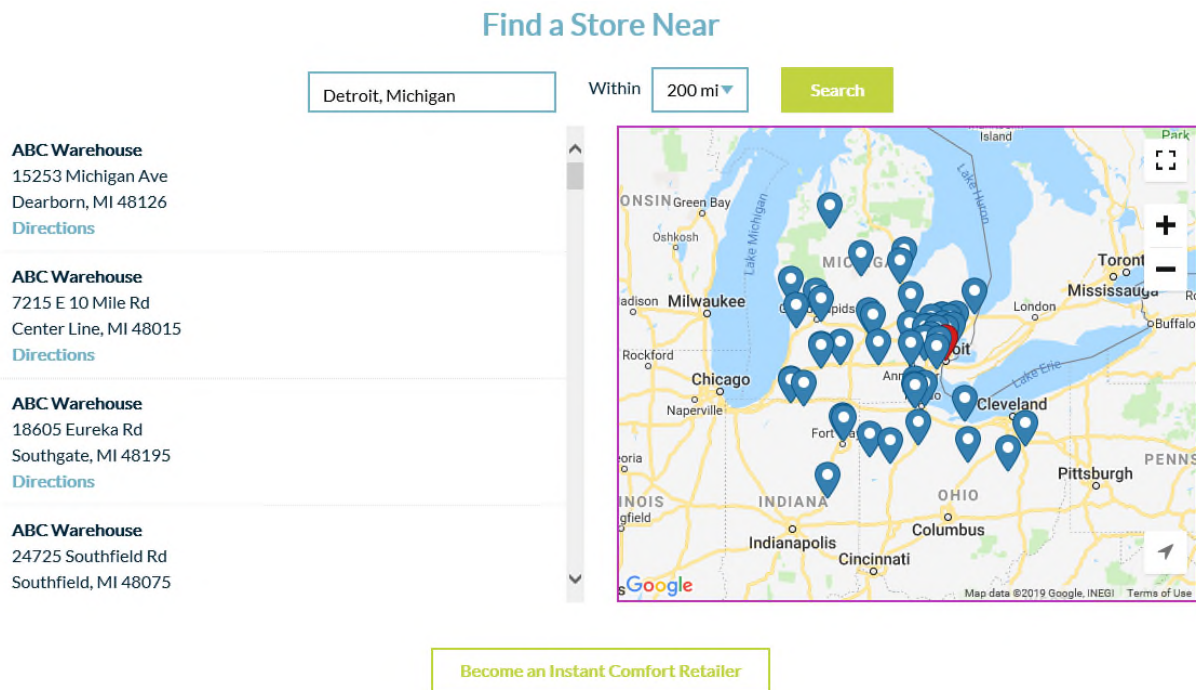
4. I am aware from non-confidential, public documents, testimony, and

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

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:



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.

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.