

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PURPLE INNOVATION, LLC,

Plaintiff and Counterclaim Defendant,

v.

TEMPUR SEALY INTERNATIONAL, INC.,
SEALY TECHNOLOGY LLC, and SEALY
MATTRESS MANUFACTURING CO., LLC,

Defendants and Counterclaim Plaintiffs.

Case No. 1:23-CV-00257

**TEMPUR SEALY INTERNATIONAL, INC.'s, SEALY TECHNOLOGY LLC's,
AND SEALY MATTRESS MANUFACTURING CO., LLC'S ANSWER,
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

ANSWER

Tempur Sealy International, Inc., Sealy Technology LLC and Sealy Mattress Manufacturing Co., LLC (collectively, “Tempur Sealy”), by their undersigned counsel, hereby answer the First Amended Complaint filed by Purple Innovation, LLC (“Purple”) on July 17, 2023 (the “FAC”, Dkt. 22).

Except as expressly set forth below, Tempur Sealy denies each and every allegation contained in the FAC, including, without limitation, the headings, sub-headings, footnotes, diagrams and tables contained in the FAC, as well as the exhibits to the FAC.

Tempur Sealy specifically denies liability to Purple, or that Purple has suffered any legally cognizable damage for which Tempur Sealy is responsible. Tempur Sealy expressly reserves the right to amend and/or supplement its answer and defenses.

Subject to the foregoing, Tempur Sealy states as follows:

NATURE OF THE ACTION¹

1. Purple Innovation, the leader in comfort innovation and the creator of the renowned Purple® Mattress, brings this patent infringement suit to stop Sealy from infringing on Purple’s intellectual property rights in its patented Purple® Hybrid and Purple® Hybrid Premier mattresses.

ANSWER: Tempur Sealy denies the allegations in Paragraph 1, except admits that Purple purports to bring a suit for patent infringement.

¹ Tempur Sealy incorporates the headings from the First Amended Complaint for convenience only. The headings are not intended as statements or admissions by Tempur Sealy, and to the extent any heading contains a factual allegation to which a response is required, Tempur Sealy denies that allegation.

2. Purple is a digitally native vertical brand with a mission to help people feel and live better through innovative comfort solutions. Purple designs and manufactures a variety of innovative, premium-branded comfort products, including mattresses, pillows, cushions, frames, sheets and more. Purple's products are the result of over 25 years of innovation and investment in proprietary and patented comfort technologies and the development of their own manufacturing processes. Purple's proprietary technologies underpin many of their mattress products and provide a range of benefits that differentiate Purple's mattresses from its competitors' products.

ANSWER: Tempur Sealy admits that Purple manufactures mattresses, pillows, cushions, frames and sheets. Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2, and therefore denies them.

3. Quickly becoming synonymous with comfort, Purple disrupted the mattress industry with its proprietary Purple GELFLEX® GRID sleep surface—which instantly adapts and cradles the body's pressure points, while the air channels enable a balanced temperature that does not get hot in the middle of the night. This radically different mattress material has the added benefit of maintaining its shape for long-lasting duration, which aids in sleep quality and general well-being such that Purple's customers get truly rejuvenating sleep and wake up refreshed and ready for the day.

ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and therefore denies them.

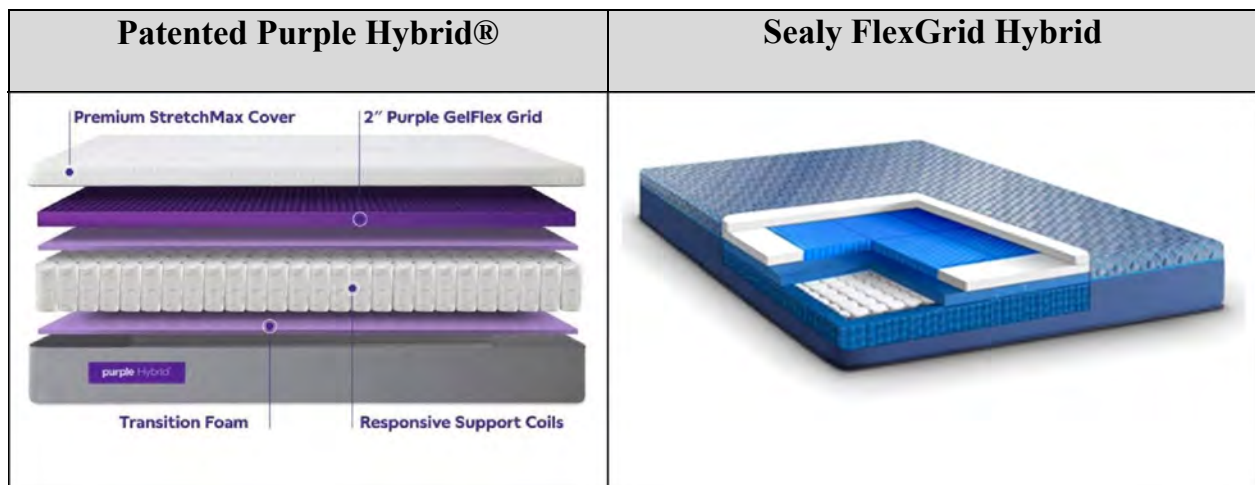
4. Purple's focus on innovation and R&D investment have resulted in widespread recognition in the sleep and comfort industry. For example, J.D. Power ranked Purple #1 in customer satisfaction, comfort and support for the bed-in-a-box category in 2019.

ANSWER: Tempur Sealy denies the allegations in Paragraph 4, except refers to the J.D. Power rankings for their contents.

5. Continuing its tradition of innovation, Purple released its first Purple Hybrid® mattress in 2018. The Purple Hybrid® is a premium-collection mattress that pairs the innovative GELFLEX® GRID for instantly adaptive support and pressure point cradling, with a responsive coil core for ease of movement and better air flow to draw more heat away. Much like its predecessor, the original Purple Mattress®, the Purple Hybrid® provided a best-in-class experience for consumers.

ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore denies them.

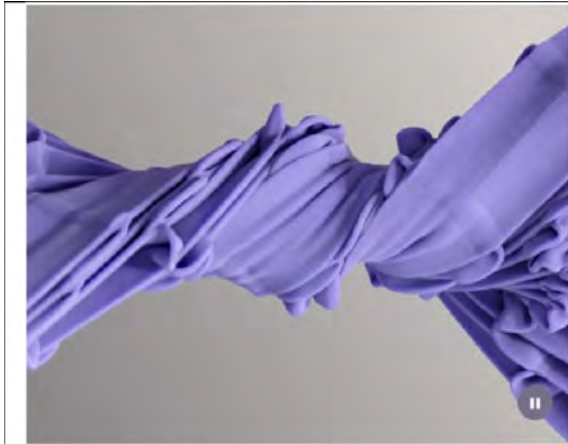
6. Purple’s innovative approach and great success destabilized the mattress market. In particular, Purple’s new products threatened Sealy, the United States’ oldest and largest mattress manufacturer and seller by market share and revenue. Faced with declining market share and no longer being able to rest on its outdated product offerings, Sealy chose not to innovate and decided to steal Purple’s technology—launching nearly copycat products in 2022, under the Sealy FlexGrid Hybrid mattress brand name (the “Infringing Products”). A side-by-side comparison shows Sealy’s shameless copying of Purple’s patented Purple Hybrid® mattress:



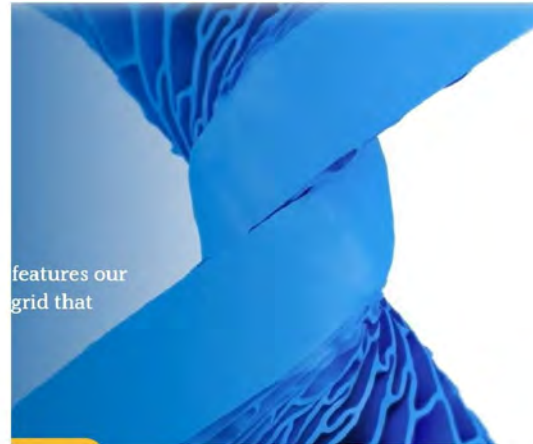
ANSWER: Tempur Sealy denies the allegations in Paragraph 6, including with regard to the accompanying images, except admits that Tempur Sealy sells a “FlexGrid Hybrid” product.

7. But Sealy did not just copy Purple’s novel, patent-protected mattress technology; it also copied Purple’s marketing strategy and approach, as demonstrated in the following side-by-side comparisons:

Purple's Gel Twist Video



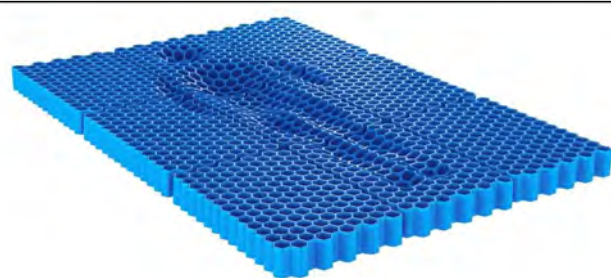
Sealy's Copied Gel Twist Video



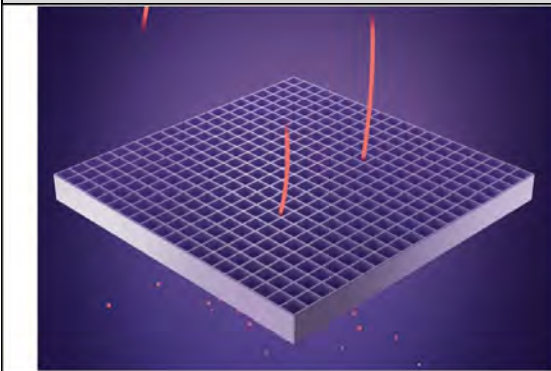
Purple's GELFLEX® GRID



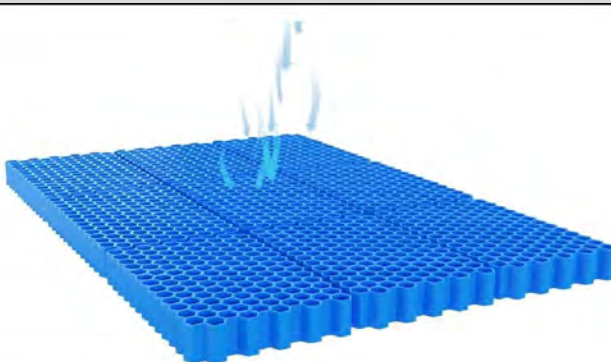
Sealy's Copied Gel Impression Video



Purple's GELFLEX® Airflow



Sealy's Copied Gel Airflow



ANSWER: Tempur Sealy denies the allegations in Paragraph 7, including with regard to the accompanying images.

8. As a result of Sealy's blatant and willful copying, Purple brings this First Amended Complaint for monetary and injunctive relief to stop Sealy's patent infringement.

ANSWER: Tempur Sealy denies the allegations in Paragraph 8.

9. This is a civil action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including at least 35 U.S.C. § 271(a), (b), and (g), to end Sealy's unauthorized and infringing offer for sale, sale, distribution, and/or use of products incorporating Purple's patented inventions.

ANSWER: Tempur Sealy denies the allegations in Paragraph 9, except admits that Purple purports to bring an action under 35 U.S.C. § 271(a), (b), and (g) for patent infringement.

10. Purple is the owner of all right, title, and interest in and to U.S. Patent No. 11,317,733 (the "'733 Patent" or "Asserted Patent"), entitled "Mattresses Including an Elastomeric Cushioning Element and a Pocketed Coil Layer and Related Methods," issued on May 3, 2022.

ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, except refers to the '733 Patent for its contents.

11. Sealy offers for sale, sells, distributes, and/or uses in the United States Infringing Products and, upon information and belief, encourages others to use the Infringing Products in an infringing matter. The Infringing Products consist of at least all sizes of the "Sealy® FlexGrid™ Hybrid" mattress.

ANSWER: Tempur Sealy denies the allegations in Paragraph 11, except admits that the Sealy FlexGrid Hybrid mattress is sold in the United States.

12. Purple seeks past and future damages as well as pre-judgment and post-judgment interest for Defendants' infringement of the Asserted Patent. Purple also seeks an injunction against further infringement of the Asserted Patent by Sealy through Sealy's offer for sale, sale, distribution, and/or use of the Infringing Products in the United States.

ANSWER: Tempur Sealy denies the allegations in Paragraph 12, and specifically denies that Purple is entitled to any relief.

PURPLE AND ITS INNOVATIVE MATTRESS TECHNOLOGY AND MARKETING

13. Purple is a Delaware limited liability company with a place of business at 4100 North Chapel Ridge Road, Suite 200, Lehi, Utah 84043.

ANSWER: Tempur Sealy admits that Purple is a Delaware limited liability company with a place of business at 4100 North Chapel Ridge Road, Suite 200, Lehi, Utah 84043.

14. Though it started small, Purple is a leader in the field of mattress technology that has rapidly expanded to compete with the largest mattress brands, including Sealy.

ANSWER: Tempur Sealy denies the allegations in Paragraph 14.

15. Prior to starting Purple, the Pearce brothers (Terry and Tony Pearce) from Alpine, Utah developed their own proprietary HYPER-ELASTIC POLYMER® technology as cushioning for wheelchairs. It performed so well that the Pearce brothers licensed the technology to makers of other medical devices, shoes, and cushioning products.

ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies them.

16. After seeing how much their cushioning technology helped people, the Pearce brothers started Purple as a new entrant small company, launching and selling their first mattresses that combined their proprietary cushioning technology with other mattress layers via Kickstarter in 2015. The Pearce brothers explained that they chose the name Purple in part because it was the color of their HYPER-ELASTIC POLYMER® technology and also because "it signifies treating everyone like royalty." *Purple: The Latest Technology in Comfort and Sleep, Kickstarter*, <https://www.kickstarter.com/projects/227992716/purple-the-latest-technology-in-comfort-and-sleep> (last visited Mar. 9, 2023).

ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and therefore denies them.

17. Consumers loved Purple's innovative new mattress products so much that Purple quickly increased its distribution and launched an online store in January 2016, becoming one of the first "bed in a box" companies to sell mattresses and other bed accessories directly to consumers exclusively via its online store. Purple has continued to quickly expand given the popularity of its products among consumers, despite the preexisting market dominance of the major legacy mattress companies. In addition to its online store, Purple now has 55 company-owned retail stores at locations across the United States and its products are sold in approximately 3,400 retail stores nationwide through its wholesale customers.

ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and therefore denies them.

18. Since its humble beginnings in 2015, Purple has manufactured and sold mattresses that utilize Purple's GELFLEX® GRID technology, which has been a key aspect of Purple's success and popularity among consumers.

ANSWER: Tempur Sealy denies the allegations in Paragraph 18, except admits that Purple has, since at least 2015, manufactured and sold mattresses that utilize Purple's GELFLEX® GRID technology.

19. The GELFLEX® GRID technology uses a repeating geometric structure to create cushioned comfort while maintaining support. Its unique design creates hundreds of columns that work together to support broad surfaces (like the back) but that give way under concentrated weight to gently cradle areas like the shoulders and hips. The technology instantly adapts to movement, reconfiguring itself to support any body position.

ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19, and therefore denies them.

20. An important benefit of Purple's mattresses is that, unlike other, more conventional types of bedding, Purple's GELFLEX® GRID technology does not trap body heat. As a result, Purple's mattresses help consumers maintain a comfortable temperature while they sleep. Consumers rave about this aspect of the Purple mattresses

in particular, as well as the overall comfort of the product. For instance, the following are examples of verified customer comments, which Purple has posted on its website:

“I don’t toss and turn, my hip pain has disappeared, it’s cool to sleep on, and provides the right amount of support while feeling like you are sleeping on air.”

Rita H.  [Purple Hybrid Mattress](#)



Laura G.

 United States
Verified Buyer

05/19/2022

LOVE this bed!!!

I am so happy to have this bed and my purple pillow. I wake up with no aches and pains, like I had with my old bed. I don’t ever have to flip my pillow or move to a new spot on the bed due to being hot. I also have a Fitbit with sleep app. My sleep scores have gone up to 80’s instead of 60’s and 70’s. It feels great to have energy all day after a good nights sleep. My only regret is that I didn’t buy this bed years ago.

Your Preferred Sleeping Style Is
Side Sleeper

 Share

Was this helpful?  15  3



Phillip H.

 United States
Verified Buyer

03/16/2022

Original purple mattress w/split king adjustable base

Love it 100% would recommend it all to everyone. Hey if your a side sleeper this is the best bed ever like sleeping on a cloud. You wake up with energy because you where finally able to get must needed rest at bedtime. Thanks so much purple for making this awesome bed products!

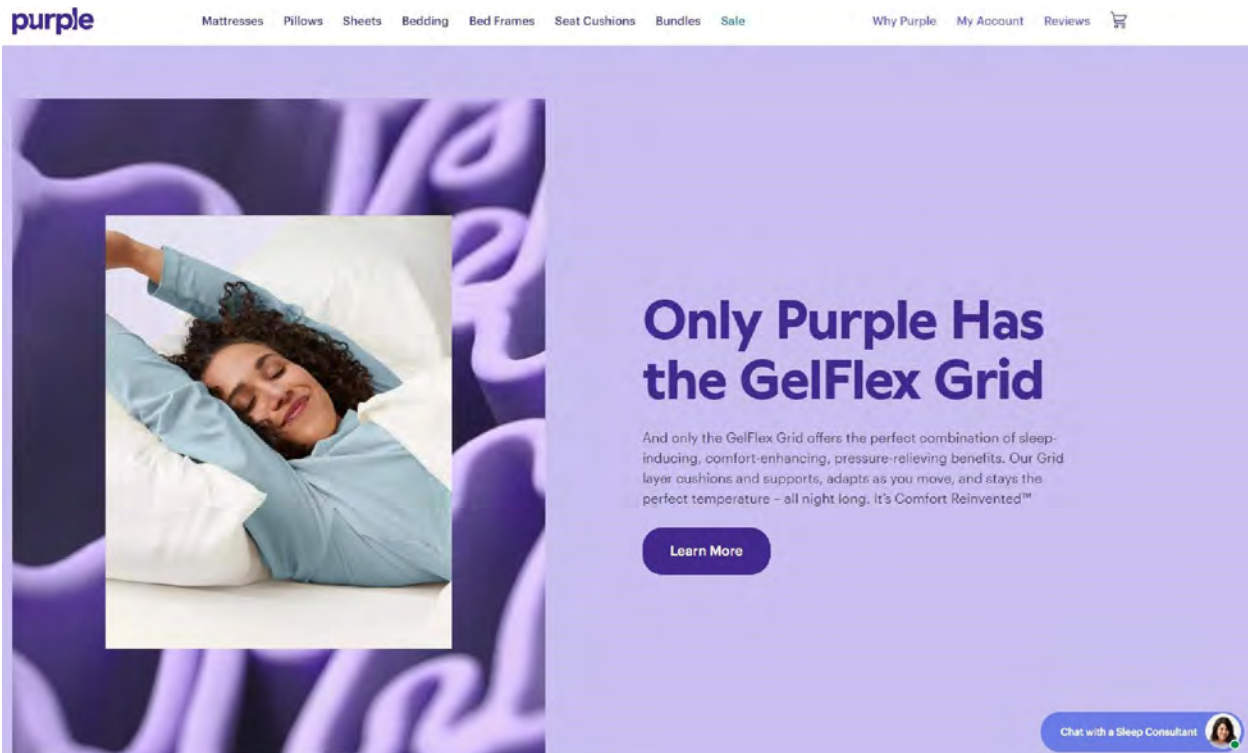
ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20, including with regard to the accompanying images, and therefore denies them.

21. An example image of the GELFLEX® GRID technology used in Purple’s mattresses is shown below:



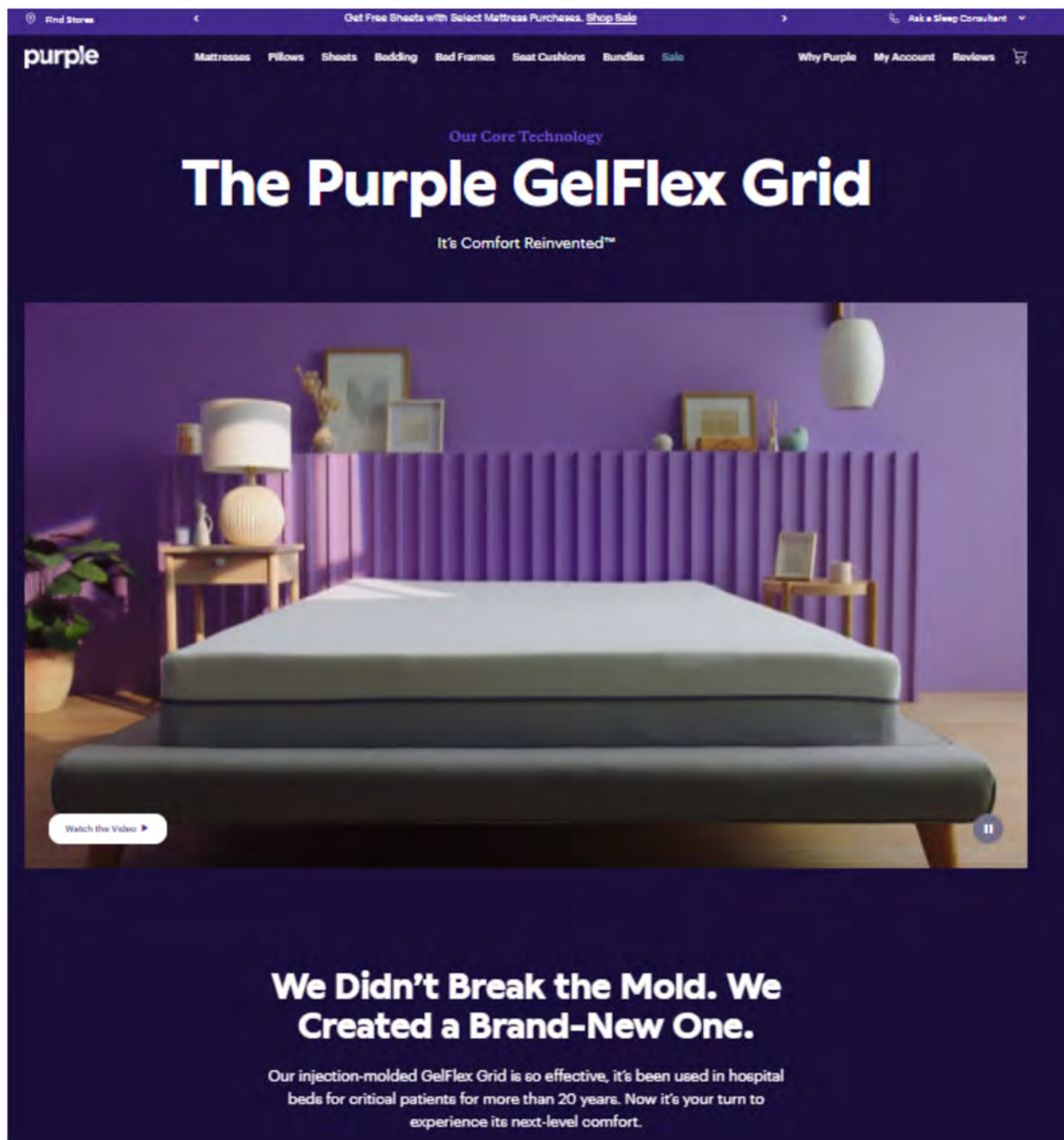
ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, including with regard to the accompanying image, and therefore denies them.

22. Purple advertises its GELFLEX® GRID technology and related mattress products prominently on its website, precisely because they are an important factor of what sets Purple apart from the competition. For instance, Purple's homepage, <https://purple.com/>, includes the following, which also features Purple's federally registered COMFORT REINVENTED® tagline.



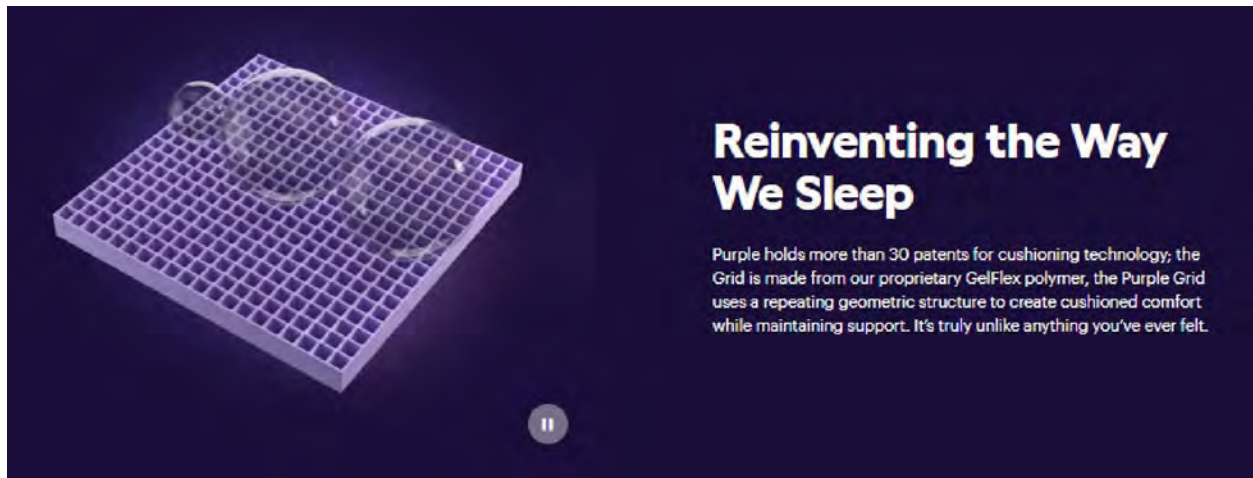
ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, including with regard to the accompanying image, and therefore denies them.

23. Purple's website also devotes a separate page entirely to the GELFLEX® GRID technology, which it markets as "Our Core Technology," found within every Purple® Mattress. The below also features Purple's COMFORT REINVENTED® tagline.



ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, including with regard to the accompanying images, and therefore denies them.

24. Purple's website also specifically assures consumers, and warns would-be competitors, that Purple "holds more than 30 patents for cushioning technology."



ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, including with regard to the accompanying image, and therefore denies them.

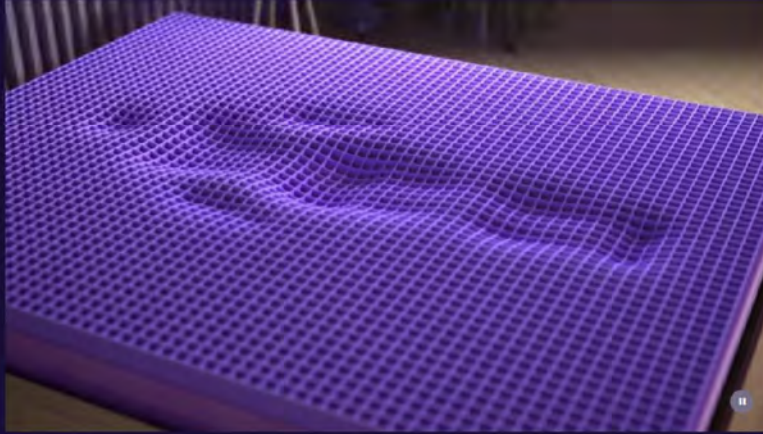
25. Many of Purple's patents are practiced by its products and specifically listed on the "Patents" page of its website, available at <https://purple.com/patents>.

ANSWER: Paragraph 25 states a legal conclusion to which no response is required. To the extent a response is required, Tempur Sealy denies the allegations in Paragraph 25, except admits that Purple's website appears to list many patents on the "Patents" page of its website.

26. To inform consumers of the benefits of Purple's GELFLEX® GRID technology and how it "instantly adapts as you move, reconfiguring itself to support any position your body takes," Purple's website includes illustrative videos, some example screenshots from which are shown below:

We Improve Sleep by Never Disrupting It

Our GelFlex Grid, instantly adapts as you move, reconfiguring itself to support any position your body takes. There's no lag time or interruption of that blissful floating feel, so you can roll, shift, or sleep-shimmy to your heart's desire.



Softness or Support? You Don't Have to Choose

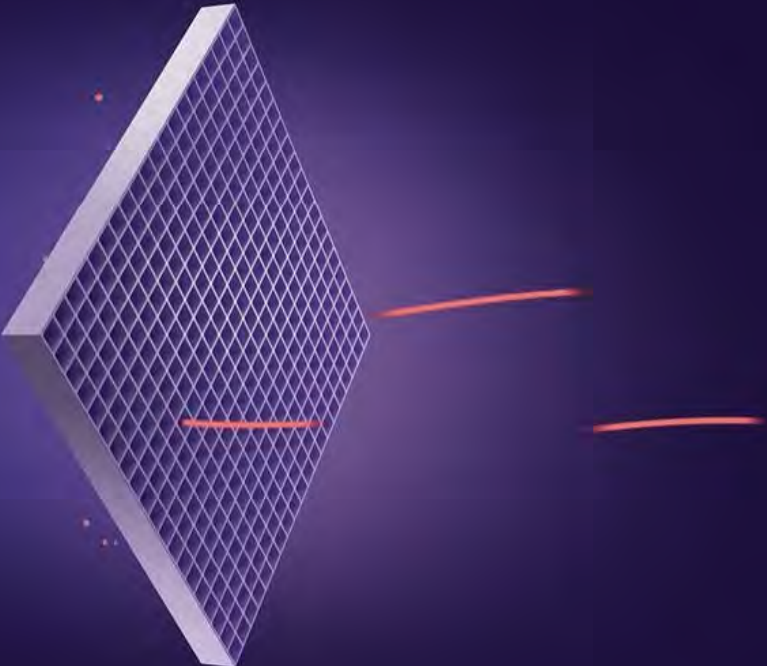
The Purple GelFlex Grid is engineered to be both soft and supportive – because that's what your body needs. Its unique design creates hundreds of columns that work together to support broad surfaces like your back, but give way under concentrated weight to gently cradle areas like shoulders and hips.

The result is an instantly adapting mattress surface that offers the ideal level of support from head to toe.



Doesn't Trap Body Heat

Unlike memory foam, the GelFlex Grid doesn't trap body heat. As a result, our mattresses can maintain a comfortable temperature all night long.



How does it work?

With over 1400 individual air channels the GelFlex grid dissipates excess body heat, drawing it away from you so you never sleep hot!



Is It Durable?

Also known as Hyper-Elastic Polymer, our GelFlex material effortlessly stretches and springs back, again and again. It's just one of the reasons our mattresses are backed by a 10-year warranty!

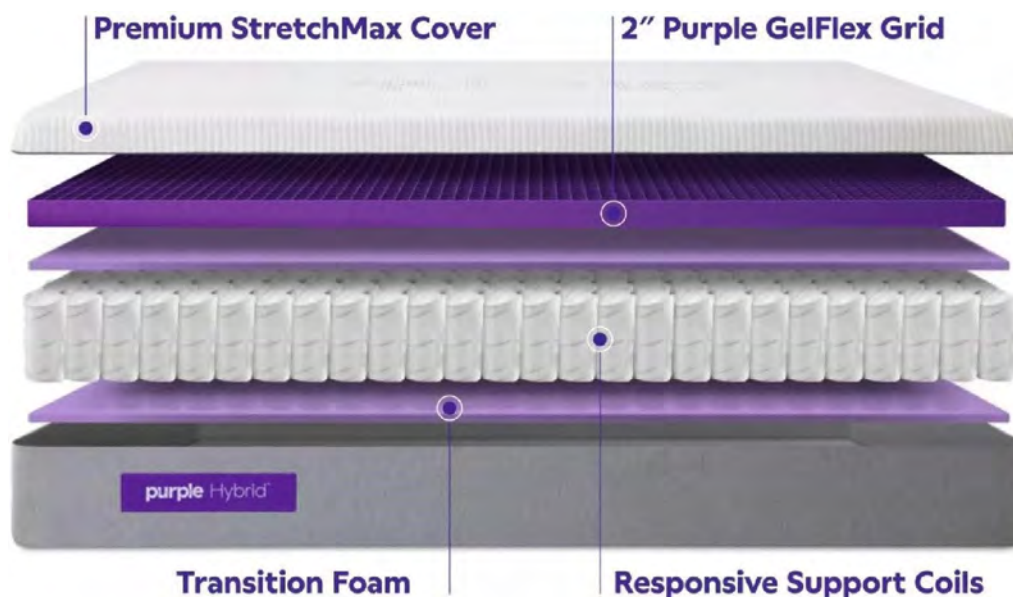
ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26, including with regard to the accompanying images, and therefore denies them.

27. Among other products, Purple sells “hybrid” mattresses that pair the comfort and instantly adaptive support of the GELFLEX® GRID technology with the buoyancy and air flow of individually wrapped coils.

ANSWER: Tempur Sealy admits that Purple sells “hybrid” mattresses that include coils.

Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27, and therefore denies them.

28. Below is an example image showing the contents of one of Purple’s Hybrid mattresses, which Purple has featured on its website:



ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28, including with regard to the accompanying image, and therefore denies them.

29. To protect its investment and intellectual property, on November 17, 2017, Purple applied for what became the '733 Patent with the U.S. Patent and Trademark Office (“USPTO”).

ANSWER: Tempur Sealy refers to the '733 Patent for its contents. Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 29, and therefore denies them.

30. In recognition of Purple’s novel invention, the USPTO issued the ’733 Patent, entitled “Mattresses Including an Elastomeric Cushioning Element and a Pocketed Coil Layer and Related Methods,” on May 3, 2022. A true and correct copy of the ’733 Patent is attached as **Exhibit A**.

ANSWER: Tempur Sealy denies the remaining allegations in Paragraph 30, except refers to the ’733 Patent for its contents, and admits that Purple attaches a copy of what purports to be the ’733 Patent as Exhibit A to the FAC.

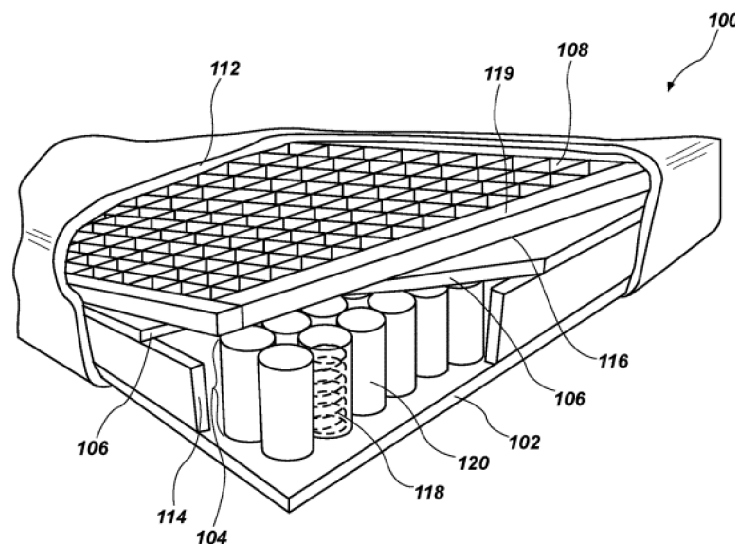
31. Purple is the sole owner of the ’733 Patent.

ANSWER: Paragraph 31 states a legal conclusion to which no response is required. To the extent a response is required, Tempur Sealy denies all of the allegations of this Paragraph.

32. The ’733 Patent concerns, among other subject matter, “cushioning elements such as mattresses including a pocketed coil layer.” Ex. A at 1:8–10.

ANSWER: Tempur Sealy admits that the ’733 Patent includes the quoted language, but otherwise denies the allegations in Paragraph 32.

33. Figure 2 (reproduced below) of the ’733 Patent illustrates a “mattress assembly 100” that “may include a base layer 102, a coil layer 104, an upper layer 106, [and] an elastomeric cushioning element 108.” *Id.* at 4:15–17.



ANSWER: Tempur Sealy denies the allegations in Paragraph 33, except refers to the '733 Patent for its contents.

34. The '733 Patent states that, “[i]n some embodiments, the mattress assembly 100 may include a stabilization material 116 between the elastomeric cushioning element 108 and the upper layer 106.” *Id.* at 4:38–40.

ANSWER: Tempur Sealy admits that the '733 Patent includes the quoted language.

35. Exemplary claim 1 of the '733 Patent describes a “mattress assembly” with a base layer, a coil layer, an upper layer, an elastomeric cushioning element layer, a stabilization layer, and an outer covering. *Id.* claim 1.

What is claimed is:

1. A mattress assembly, comprising:

a base layer;

a coil layer disposed over the base layer, the coil layer comprising a plurality of pocketed coils;

an upper layer disposed over the coil layer;

a stabilization layer comprising a scrim fabric;

an elastomeric cushioning element disposed over the stabilization layer, an elastomeric material of the elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of the stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer, the reduced slip surface or the non-slip surface positioned against an upper surface of the upper layer; and

an outer covering encasing the base layer, the coil layer, the upper layer, the stabilization layer, and the elastomeric cushioning element.

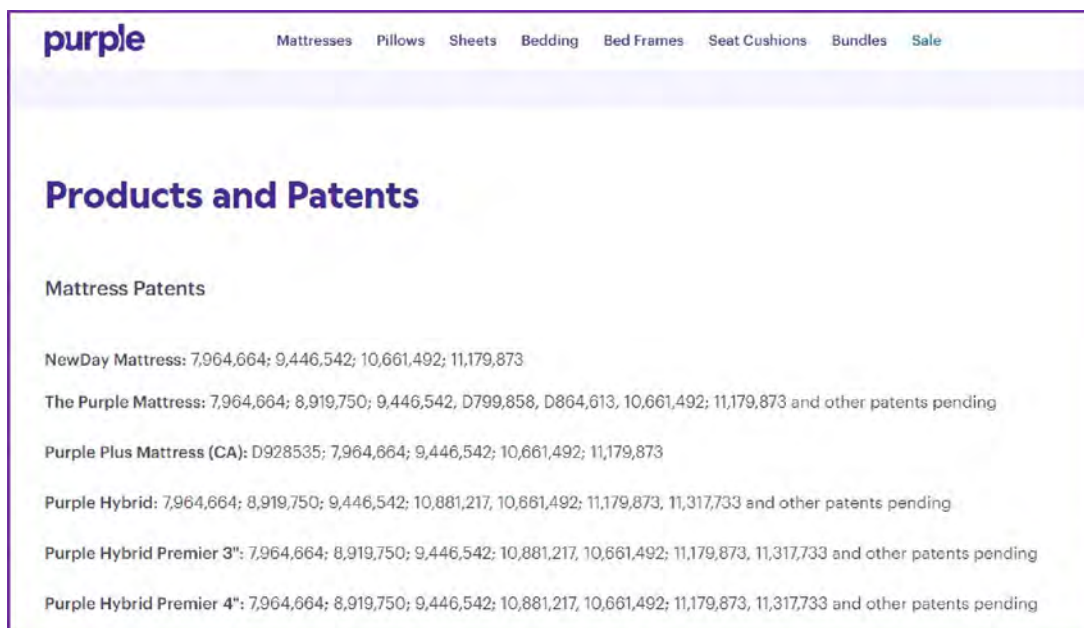
ANSWER: Tempur Sealy admits that this is the text of Claim 1 of the '733 Patent, that Claim 1 includes the described layers and covering, and otherwise denies the remaining allegations in Paragraph 35.

36. The '733 Patent is valid and enforceable.

ANSWER: Tempur Sealy denies the allegations in Paragraph 36.

PURPLE'S [ALLEGED] NOTICE TO POTENTIAL INFRINGERS

37. To inform potential infringers that Purple possessed valuable intellectual property, Purple began marking its products that practiced its patented inventions (including as reflected in the '733 Patent) on or before August 26, 2018, and Purple shared this information publicly. *See Patents*, Purple, <https://purple.com/patents> (last visited Mar. 15, 2023); *Patents*, Purple, <https://web.archive.org/web/20180826201917/https://purple.com/patents> (archived Aug. 26, 2018). Purple added its patented and patent-pending Purple Hybrid® mattress to its patent marking page on or before March 5, 2020, and specifically listed the '733 Patent as covering the Purple Hybrid® mattresses on or before October 23, 2022. *See Patents*, Purple, <https://web.archive.org/web/20200305073654/https://purple.com/patents> (archived Mar. 5, 2020); *Patents*, Purple, <https://web.archive.org/web/20221023102028/https://purple.com/patents> (archived Oct. 23, 2022).



ANSWER: Tempur Sealy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37.

38. Upon information and belief, Sealy has purchased Purple Hybrid® mattresses for testing, copying and comparative product demonstrations. For example, Sealy compares a Purple Hybrid Premier® 3 mattress to its TEMPUR-ProAdapt mattress on its Tempur-Pedic website. *Meet the Real Purple Mattress*, [Tempur-Pedic.com](https://www.tempurpedic.com/purple-comparison/), <https://www.tempurpedic.com/purple-comparison/> (last visited Mar. 15, 2023); *id.*, <https://web.archive.org/web/20220517012526/https://www.tempurpedic.com/purple->

[comparison/](#) (archived May 17, 2022). Purple labels each of its mattresses with directions to its marking URL, www.purple.com/patents, where Sealy would have seen the '733 Patent listed.

ANSWER: Tempur Sealy denies the allegations in Paragraph 38, except states that it has purchased a Purple Hybrid mattress and that Purple's Mattresses do not list patents it contends cover its products.

39. Accordingly, upon information and belief, Sealy has been aware of the '733 Patent since at least October 23, 2022, when Purple provided notice of the '733 Patent on its Patents webpage.

ANSWER: Tempur Sealy denies the allegations in Paragraph 39.

40. To the extent Sealy denies knowledge of Purple's '733 Patent, Sealy deliberately took steps not to learn of the '733 Patent and acted with willful blindness.

ANSWER: Tempur Sealy denies the allegations in Paragraph 40.

**SEALY AND ITS [ALLEGED] WILLFUL INFRINGEMENT OF
PURPLE'S TECHNOLOGY AND COPY-CAT MARKETING**

41. On information and belief, Tempur Sealy International, Inc. is a Delaware corporation with its principal place of business at 1000 Tempur Way, Lexington, Kentucky 40511.

ANSWER: Tempur Sealy admits the allegations in Paragraph 41.

42. On information and belief, Sealy Technology LLC is a North Carolina corporation with its principal place of business at One Office Parkway, Trinity, North Carolina 27370. On information and belief, Sealy Technology LLC is a wholly owned subsidiary of Tempur Sealy International, Inc.

ANSWER: Tempur Sealy admits the allegations in Paragraph 42.

43. On information and belief, Sealy Mattress Manufacturing Co., LLC is a Delaware corporation with its principal place of business at One Office Parkway, Trinity, North Carolina 27370. On information and belief, Sealy Mattress Manufacturing Co., LLC is a wholly owned subsidiary of Tempur Sealy International, Inc.

ANSWER: Tempur Sealy admits the allegations in Paragraph 43.

44. On information and belief, Sealy manufactures, markets, offers for sale, and sells mattresses in the United States, including the Infringing Products.

ANSWER: Tempur Sealy denies the allegations in Paragraph 44, except admits that it sells mattresses in the United States.

45. Sealy is the oldest and largest mattress manufacturer and seller of mattresses in the United States by market share of units sold and revenue. Purple's entrance into the market, and popularity among consumers, threatened to disrupt Sealy's market dominance. Instead of fairly competing with Purple, however, Sealy pursued a strategy of copying Purple's innovative technology and its marketing strategy.

ANSWER: Tempur Sealy denies the allegations in Paragraph 45.

46. Sealy is making, using, selling, and/or offering for sale in the United States mattresses that infringe at least Claims 1, 2, 5, 6, 7, 8, 16 and 20 of the '733 Patent.

ANSWER: Tempur Sealy denies the allegations in Paragraph 46.

47. On information and belief, in or around 2022, Sealy intentionally, deliberately and willfully copied Purple's technology to create a competing product. In October 2022, Sealy launched its "FlexGrid" line of mattresses, which includes Hybrid and Foam constructions, both containing a gel grid layer that Sealy markets under the "HexGel" mark. On information and belief, Sealy did not make, sell, offer to sell, or advertise a mattress that included a gel grid layer prior to its October 2022 introduction of the "FlexGridTM" line. On information and belief, the Infringing Products (including at least the Hybrid construction of the Sealy® FlexGridTM mattress line) infringes the '733 Patent.

ANSWER: Tempur Sealy denies the allegations in Paragraph 47, except admits that it launched its "FlexGrid" line of mattresses in October 2022 and that the "FlexGrid" line of mattresses includes Hybrid and Foam constructions that both contain a gel grid layer marketed under the "HexGel" mark.

48. Below is an image of the Accused Product:



Hybrid

Features HexGel™ pressure relief support with the motion-reducing support of Response Pro Encased Coils to create a one-of-a-kind sleep experience perfect for every type of sleeper.

Sealy® FlexGrid™, [Sealy.com](https://www.sealy.com), <https://www.sealy.com/mattresses/sealy-flexgrid/v/849/> (last visited June 5, 2023).

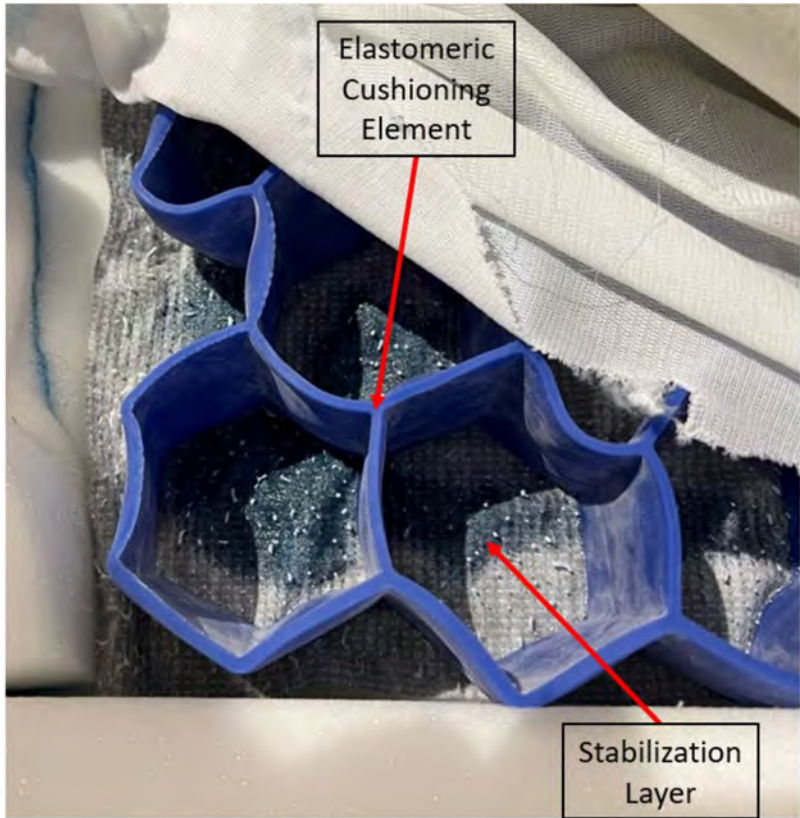
ANSWER: Tempur Sealy denies the allegations in Paragraph 48, except refers to the webpage <https://www.sealy.com/mattresses/sealy-flexgrid/v/849/> for its contents.

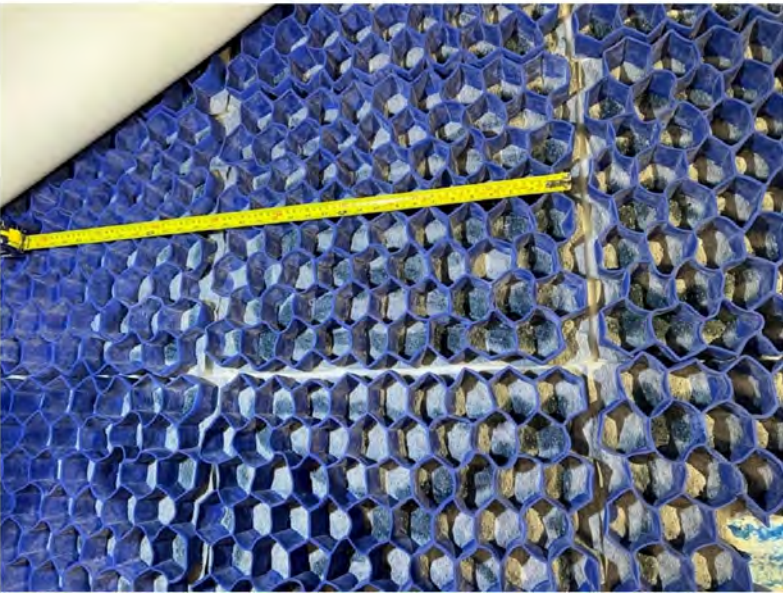
49. The Accused Product infringes each and every limitation of at least one claim of the '733 Patent. Detailed infringement claim charts are attached as **Exhibit B**.

ANSWER: Tempur Sealy denies the allegations in Paragraph 49.

50. For example, the Accused Product contains each element of claim 1:

Claim 1 Limitation	FlexGrid's Infringement
[1.pre] A mattress assembly, comprising:	To the extent the preamble is found to be limiting, the FlexGrid is "a mattress assembly."
[1.a] a base layer;	The FlexGrid contains multiple layers, including a layer at the bottom of the composition—a "base layer" of the assembly.

[1.b] a coil layer disposed over the base layer, the coil layer comprising a plurality of pocketed coils;	The FlexGrid contains a coil layer, which contains many fabric-pocketed coils, disposed over (situated on top of) the base layer. 
[1.c] an upper layer disposed over the coil layer;	The FlexGrid contains an upper layer disposed over (situated on top of) the coil layer.
[1.d] a stabilization layer comprising a scrim fabric;	The FlexGrid contains another mattress layer between the upper layer and the elastomeric cushioning element that is made of a scrim fabric (“a stabilization layer”). 

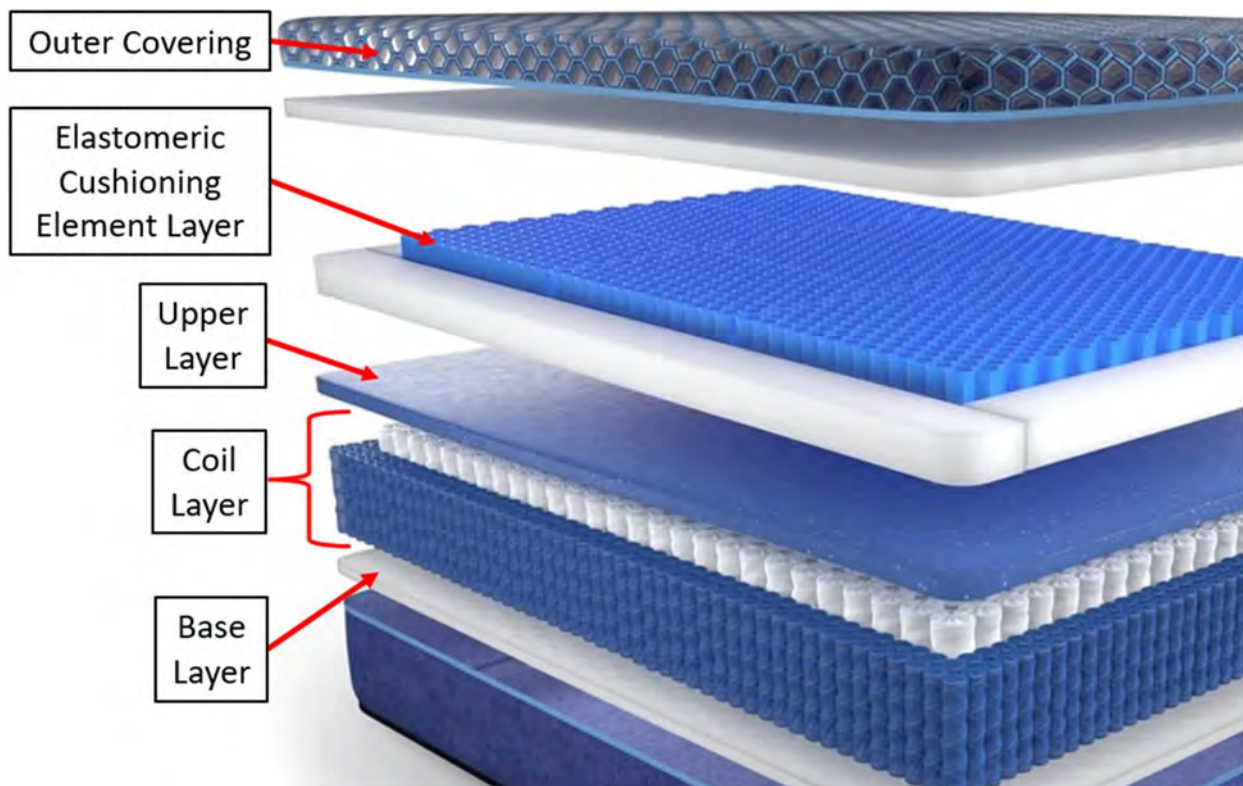
[1.e.i] an elastomeric cushioning element disposed over the stabilization layer,	The FlexGrid contains a layer featuring an elastomeric cushioning element. Sealy markets this element as “HexGel.” This elastomeric cushioning element layer is disposed over the stabilization layer.
[1.e.ii] an elastomeric material of the elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of the stabilization layer to the elastomeric cushioning element,	The elastomeric material (HexGel material) of the elastomeric cushioning element seeps through the scrim fabric stabilization layer to secure the upper surface of the scrim fabric stabilization layer to the elastomeric cushioning element itself.
[1.e.iii] the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer, the reduced slip surface or the non-slip surface positioned against an upper surface of the upper layer; and	The HexGel elastomeric material is exposed on the bottom side of the stabilization layer, creating a reduced or non-slip surface on the bottom of the stabilization layer such that it does not slip against the top surface of the upper layer. 
[1.f] an outer covering encasing the base layer, the coil layer, the upper layer, the stabilization layer, and	The FlexGrid includes at least one outer covering that encases the base layer, the coil layer, the upper layer, the stabilization layer, and the elastomeric cushioning element.

the elastomeric cushioning element.	
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Ex. B.

ANSWER: Paragraph 50 states a legal conclusion to which no response is required. To the extent a response is required, Tempur Sealy denies the allegations in Paragraph 50, including the allegations contained in the accompanying table.

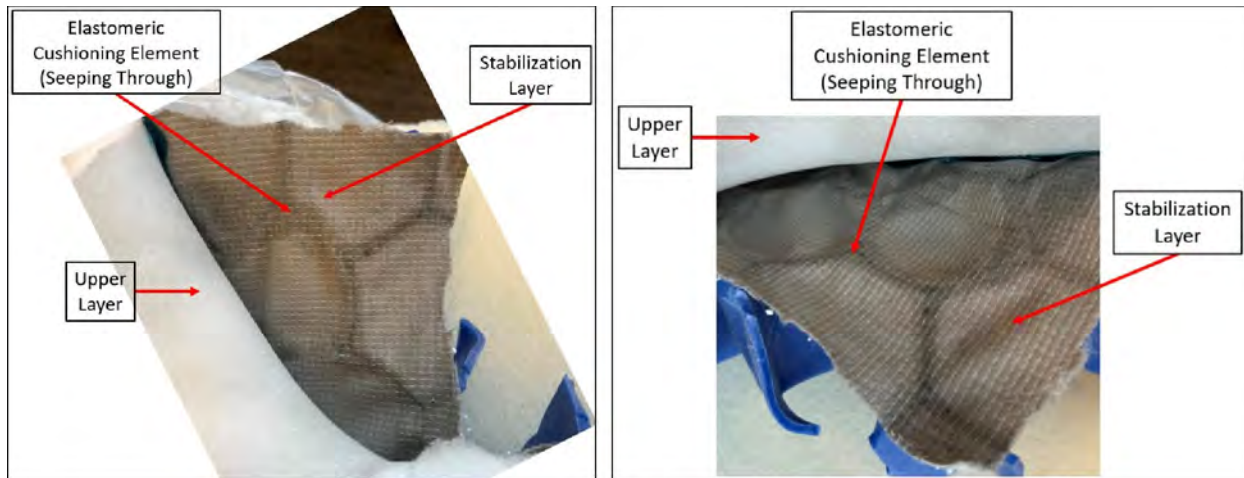
51. The FlexGrid's infringement of claim 1 of the '733 Patent is additionally shown by Sealy's public marketing materials (with added labeling):



Sealy® FlexGrid™, [Sealy.com](https://www.sealy.com), <https://www.sealy.com/mattresses/sealy-flexgrid/v/849/> (last visited June 5, 2023) (annotated).

ANSWER: Tempur Sealy denies the allegations in Paragraph 51, including with regard to the accompanying image and annotations, except refers to the webpage <https://www.sealy.com/mattresses/sealy-flexgrid/v/849/> for its contents.

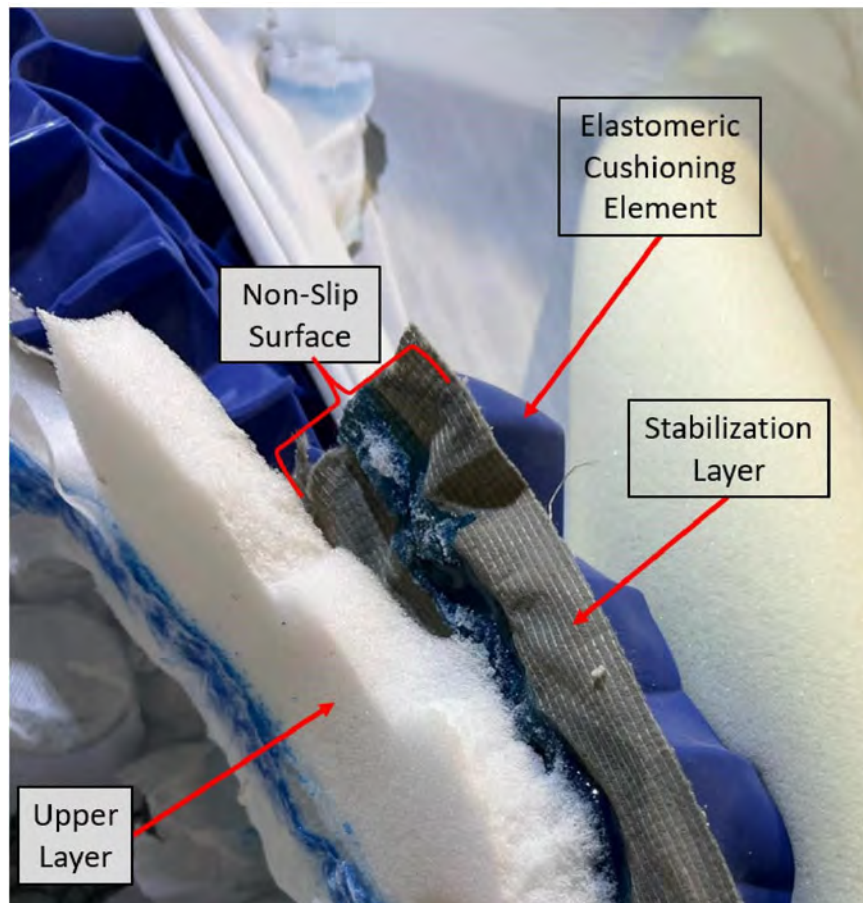
52. The FlexGrid contains a scrim fabric stabilization layer between the elastomeric cushioning element and the upper layer. The elastomeric cushioning element seeps through (e.g., is “melt-fused into, bleed[s] through, push[es] through, leak[s] through, pass[es] through, etc.”) the stabilization layer, Ex. A at 4:50–51, as shown below:



Ex. B at 27–30. This secures the bottom of the HexGel material to the top of the stabilization layer.

ANSWER: Tempur Sealy denies the allegations in Paragraph 52, including with regard to the accompanying images and annotations.

53. The bottom of the FlexGrid's stabilization layer creates a reduced or non-slip surface against the top of the upper layer, as shown below:



ANSWER: Tempur Sealy denies the allegations in Paragraph 53, including with regard to the accompanying image and annotations.

54. On information and belief, Sealy had actual and constructive knowledge of the '733 Patent and willfully infringed the '733 Patent in its manufacturing, selling, and offering for sale the Accused Product. Additionally, at least since the filing of Purple's Complaint on March 24, 2023, Sealy has had actual knowledge of the '733 Patent and its infringement thereof.

ANSWER: Tempur Sealy denies the allegations in Paragraph 54, except admits that it has had knowledge of the '733 Patent since the filing of Purple's Complaint on March 24, 2023.

55. Not only has Sealy intentionally and deliberately infringed Purple's patented technology, but it also has copied Sealy's marketing strategies. For instance, Sealy's selection of the "FlexGrid" and "HexGel" marks are clearly based on and similar to Purple's GELFLEX® GRID mark. Sealy's marketing materials to consumers, such as its website, have also referred to the Infringing Products as featuring a "hyper-elastic polymer," despite Purple's prior trademark use and registrations for HYPER-ELASTIC POLYMER®, which date back to 2016.

ANSWER: Tempur Sealy denies the allegations in Paragraph 55.

56. Just like Purple, Sealy touts that its gel grid layer in the Infringing Products provide a "cool night's rest," as seen in the below examples from Sealy's website.

Sealy

Shop ▾ Discover Sealy Sale

Find a Retailer Support ▾ 1

Exclusive HexGel™ Support

Sealy® FlexGrid™

★★★★★ ▾ 6 Reviews

23K+ Sealy® 5-Star Reviews ✓

A breakthrough evolution in sleep technology, only FlexGrid™ features our new and exclusive HexGel™ material – a pressure-relieving gel grid that provides, a unique feel and cool night's rest.

Construction

Foam Hybrid

Size

Queen

\$2,149.00 or \$89.55/mo.² for 24 months¹ (total payments of \$2,149.00)

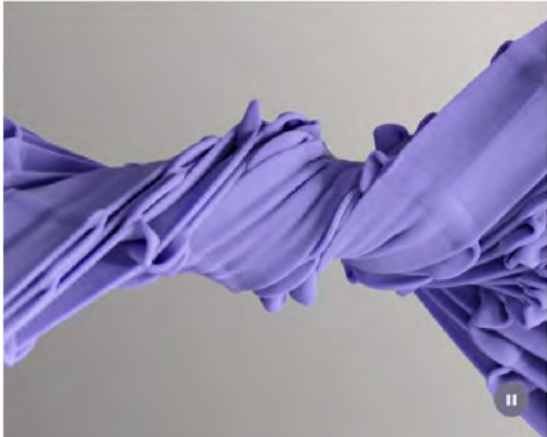
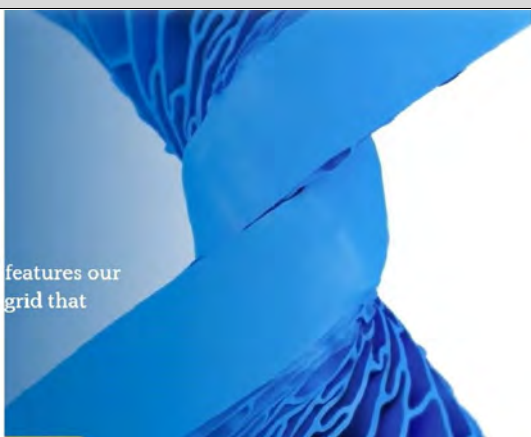
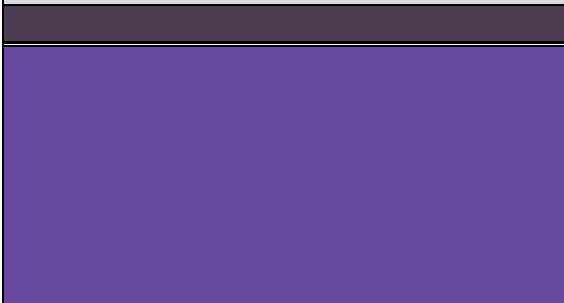
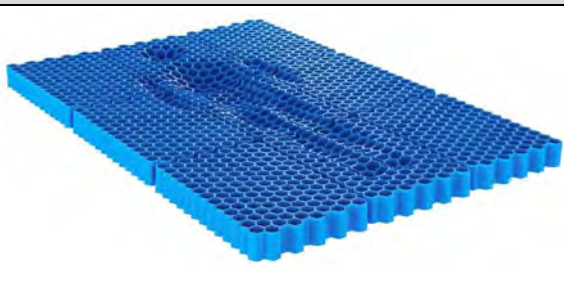
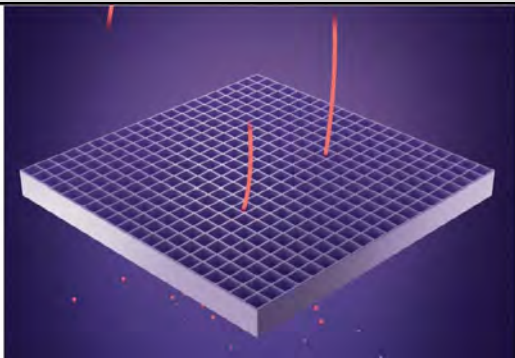
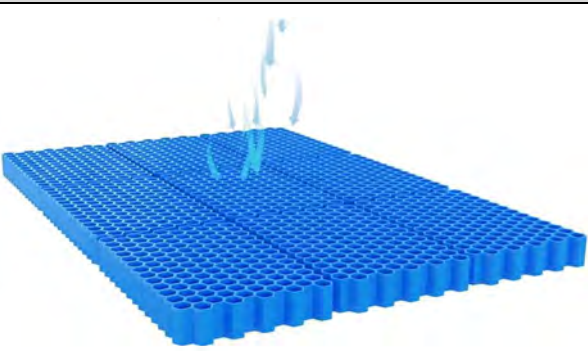


ANSWER: Tempur Sealy denies the allegations in Paragraph 56, except refers to its website for its contents.

57. Sealy also has misleadingly presented the Infringing Products as providing innovative technology that Sealy has developed “from the ground up” when, in fact, the Infringing Products infringe and copy Purple’s patented technology. For instance, as shown in the two screenshots directly above, Sealy’s website tries to pass off the infringing FlexGrid products as “[a] breakthrough evolution in sleep technology.”

ANSWER: Tempur Sealy denies the allegations in Paragraph 57.

58. The demonstrative videos and visuals on Sealy’s website also copy Purple’s demonstrative videos and visuals. Below are example screenshots of three such videos or visuals on the parties’ respective websites. Tempur Sealy admits that Purple includes what purport to be images from Purple’s and Tempur Sealy’s websites.

Purple twisting video on website	Sealy twisting video on website
	
Purple website showing how GELFLEX® GRID “instantly adapts as you move, reconfiguring itself to support any position your body takes”	Sealy website showing how Infringing Products “can stretch when pressure is applied and rebound when it’s not”
	
Purple website showing how product “doesn’t trap body heat,” and thus “maintain[s] a comfortable temperature all night long”	Sealy website showing how Infringing Products “eliminate waking up overheated, keeping you comfortable cool the moment you lie down”
	

ANSWER: Tempur Sealy denies the allegations in Paragraph 58, except Tempur Sealy refers to its website for its contents.

59. Upon information and belief, Sealy deliberately copied the Purple Hybrid Premier® 3 mattress's composition and marketing strategies in its "development" and sales of the Accused Products.

ANSWER: Tempur Sealy denies the allegations in Paragraph 59.

JURISDICTION

60. This civil action asserts claims arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* This Court therefore has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

ANSWER: Tempur Sealy states that Paragraph 60 contains a legal conclusion, as to which no response is required. To the extent a response is required, Tempur Sealy denies the allegations in Paragraph 60.

61. This Court has personal jurisdiction over the Defendants. Personal jurisdiction exists generally and specifically over all of the Defendants because they (directly and/or through their subsidiaries, divisions, groups or distributors) have sufficient minimum contacts with the Middle District of North Carolina as a result of substantial business conducted within the State of North Carolina, including through sales of Infringing Products in this District via online ordering, as well as the maintenance of a regular place of business within this District, as alleged further immediately below.

ANSWER: Tempur Sealy denies the allegations in Paragraph 61, except that it does not contest personal jurisdiction in this Court for this action only.

62. Moreover, on information and belief, Sealy maintains a regular and established place of business within this District at: One Office Parkway, Trinity, North Carolina 27370. On information and belief, they employ individuals in this District and the State of North Carolina as part of maintaining a regular and established place of place in this District.

ANSWER: Tempur Sealy admits the allegations in Paragraph 62.

63. Personal jurisdiction also exists specifically over all of the Defendants because each has committed acts of infringement in this District and the State of North Carolina, including at least because each (directly and/or through their subsidiaries, divisions, groups, or distributors) advertises, markets, offers for sale, distributes, and/or sells the infringing products at issue in this case in this District and the State of North Carolina. As such, the Defendants have committed tortious acts in this District and the State of

North Carolina; have expressly aimed their actions at this District and the State of North Carolina with the knowledge that they would cause harm and substantial injury to Purple in this District and the State of North Carolina; and Purple's claims relate to the Defendants' products containing technology advertised, marketed, used, offered for sale, and/or sold in this District and in the State of North Carolina.

ANSWER: Tempur Sealy denies the allegations in Paragraph 63.

VENUE

64. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Sealy maintains a regular and established place of business in this District, and each of the Defendants has committed acts of infringement in this District.

ANSWER: Tempur Sealy denies the allegations in Paragraph 64, except states that it does not contest venue in this district in this action only.

COUNT I – [ALLEGED] INFRINGEMENT OF THE '733 PATENT

65. Purple incorporates and realleges Paragraphs 1 through 64 of this Complaint as if fully set forth herein.

ANSWER: Tempur Sealy repeats and realleges its responses to Paragraphs 1–64 with the same force and effect as if fully restated herein.

66. The USPTO duly and legally issued the '733 Patent on May 3, 2022. Purple is the owner of all right, title, and interest in and to the '733 Patent. The '733 Patent is valid.

ANSWER: Tempur Sealy denies the allegations in Paragraph 66.

67. The Defendants have infringed, and continue to infringe, one or more claims of the '733 Patent, including at least claims 1, 2, 5, 6, 7, 8, 16 and 20, either literally or under the doctrine of equivalents, by offering for sale in the United States, selling in the United States, and/or using in the United States, products that are covered by one or more claims of the '733 Patent. These products include at least all sizes of the Sealy® FlexGrid™ Hybrid mattress.

ANSWER: Tempur Sealy denies the allegations in Paragraph 67.

68. All sizes of the Sealy® FlexGrid™ Hybrid mattress practice each and every element of claims 1, 2, 5, 6, 7, and 8 of the '733 Patent, either literally or under the doctrine of equivalents, as shown in further detail in **Exhibit B**.

ANSWER: Tempur Sealy denies the allegations in Paragraph 68.

69. The process of manufacturing all sizes of the Sealy® FlexGrid™ Hybrid mattress practices each and every element of claims 16 and 20 of the '733 Patent, either literally or under the doctrine of equivalents, as shown in further detail in **Exhibit B**. Sealy offers to sell, sells, or uses within the United States all sizes of the Sealy® FlexGrid™ Hybrid mattress—a product which is made by a process patented in the United States— and Sealy's offer to sell, sale, or use of the products occurs during the term of the '733 Patent.

ANSWER: Tempur Sealy denies the allegations in Paragraph 69.

70. The Defendants have had knowledge of the '733 Patent at least since October 23, 2022 as a result of Purple's patent marking, and of Defendants' acquisition of Purple's Hybrid mattresses, and as a result of the filing of Purple's Complaint on March 24, 2023, yet continued infringing the '733 Patent.

ANSWER: Tempur Sealy denies the allegations in Paragraph 70, except admits that it has had knowledge of the '733 Patent since the Complaint was filed on March 24, 2023.

71. With full knowledge of the '733 Patent, and that its acts were infringing, Defendants' infringement has been willful, deliberate, and intentional.

ANSWER: Tempur Sealy denies the allegations in Paragraph 71.

REQUEST FOR RELIEF

72. WHEREFORE, Purple requests judgment against Defendants as follows:

73. Entry of judgment that the Defendants have directly infringed one or more claims of the Asserted Patent;

74. Finding that Defendants have willfully infringed and are willfully infringing one or more claims of the Asserted Patent;

75. Entry of a permanent injunction restraining and enjoining Defendants, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from any further offer for sale, sale, and/or use of their infringing products and/or services and any other infringement of the Asserted Patent, whether direct or indirect;

76. An award of damages to compensate Purple for Defendants' infringement, including damages pursuant to 35 U.S.C. § 284, as well as prejudgment and post-judgment interest;

77. An award of costs and expenses in this action, including an award of Purple's reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

78. A finding that this is an exceptional case, award of treble damages due to Defendants' deliberate and willful conduct, and order Defendants to pay Purple's costs of suit and attorneys' fees; and

79. For such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

ANSWER: Tempur Sealy denies that Purple is entitled to any relief requested in its Request for Relief (Paragraphs 72–79). The FAC, and each and every claim stated therein, fails to state a claim upon which relief can be granted.

DEMAND FOR JURY TRIAL

80. Purple respectfully demands a trial by jury on all claims and issues so triable.

ANSWER: Paragraph 80 contains no factual allegation requiring a response. To the extent a response is required, Tempur Sealy denies the allegations in Paragraph 80.

AFFIRMATIVE DEFENSES

FIRST DEFENSE: FAILURE TO STATE A CLAIM

Purple's FAC, and each and every claim stated therein, fails to state a claim upon which relief can be granted.

SECOND DEFENSE: EQUITABLE DEFENSES

Purple's claims are barred, in whole or in part, by one or more of the doctrine of laches, waiver, equitable estoppel, prosecution history estoppel, unclean hands and/or other applicable equitable defenses.

**THIRD DEFENSE: FAILURE TO STATE A CLAIM FOR WILLFUL
INFRINGEMENT**

Purple's FAC, and each and every claim stated therein, fails to state a claim for willful infringement upon which relief can be granted.

FOURTH DEFENSE: LIMITATION ON DAMAGES

Purple's claims for damages are limited as a consequence of failing to comply with the requirements of 35 U.S.C. §§ 286, 287, and/or 288.

FIFTH DEFENSE: LIMITATION ON DAMAGES

Any recovery of damages by Purple is limited in whole or in part by the failure to mitigate damages.

SIXTH DEFENSE: NO INJUNCTIVE RELIEF

Purple is not entitled to injunctive relief because any alleged injury to Purple is not immediate or irreparable, and Purple has an adequate remedy at law.

* * *

Tempur Sealy reserves the right to assert any additional defenses that further investigation or discovery may necessitate. By asserting a defense herein, Tempur Sealy is not assuming a burden of proof or persuasion not otherwise required by applicable law.

COUNTERCLAIMS

Defendants Tempur Sealy International, Inc., Sealy Technology LLC and Sealy Mattress Manufacturing Co., LLC (collectively, “Tempur Sealy”) hereby assert the following Counterclaims against Purple Innovation, LLC (“Purple”):

NATURE OF THE ACTION

1. This is an action for declaratory judgment of non-infringement, invalidity, and unenforceability of United States Patent No. 11,317,733 (the “’733 Patent”) arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

PARTIES

1. Tempur Sealy International, Inc. is a Delaware corporation with its principal place of business at 1000 Tempur Way, Lexington, Kentucky 40511.
2. Sealy Technology LLC is a North Carolina corporation with its principal place of business at One Office Parkway, Trinity, North Carolina 27370.
3. Sealy Mattress Manufacturing Co., LLC is a Delaware corporation with its principal place of business at One Office Parkway, Trinity, North Carolina 27370.
4. Purple is a Delaware limited liability company with a place of business at 4100 North Chapel Ridge Road, Suite 200, Lehi, Utah 84043.

JURISDICTION AND VENUE

5. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 et seq.

6. This court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

7. Purple has submitted to the personal jurisdiction of this Court by filing its First Amended Complaint (“FAC”) in this district.

8. Venue is proper in this Court because Purple filed its FAC in this district.

THE '733 PATENT

9. United States Patent No. 11,317,733, entitled “Mattresses including an elastomeric cushioning element and a pocketed coil layer and related methods”, names Tony M. Pearce, Lars Christen Hamilton and Tanner Rick Wheadon as inventors and issued on May 3, 2022. Attached as Exhibit A is a copy of the '733 Patent.

10. The effective filing date of the '733 Patent is November 17, 2017.

11. The '733 Patent is directed, *inter alia*, to a hybrid mattress that includes an “elastomeric cushioning element” wherein “an elastomeric material of the elastomeric cushioning element seep[s] through the stabilization layer to secure an upper surface of the stabilization layer to the elastomeric cushioning element, ***the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer***”. ('733 Patent, cl. 1 (emphasis added)).

12. On information and belief, Purple is the owner of all right, title and interest in the '733 Patent.

BACKGROUND

13. On March 24, 2023, Purple filed its Complaint purporting to allege infringement by Tempur Sealy of the '733 Patent with regards to Tempur Sealy's FlexGrid Hybrid mattress.

14. Tempur Sealy's investigation into Purple's infringement allegations revealed that not only did the prior art render the asserted claims of the '733 Patent invalid, but also that two critical references which establish the invalidity of the '733 Patent were undoubtedly known to Purple during the prosecution of the '733 Patent. Nonetheless, Purple failed to disclose those references to the United States Patent and Trademark Office (the "Patent Office") during the prosecution of the '733 Patent.

15. Tempur Sealy therefore seeks declaratory judgment confirming that its FlexGrid Hybrid product does not infringe any claim of the '733 Patent, that the claims of the '733 Patent are invalid, and that the claims of the '733 Patent are unenforceable due to Purple's inequitable conduct before the Patent Office.

FACTS

16. The FlexGrid Hybrid mattress does not infringe any valid and enforceable claim of the '733 Patent. Purple cannot show that Tempur Sealy's FlexGrid hybrid practices each and every limitation of any claim of the '733 Patent, and particularly, Purple cannot show that the FlexGrid Hybrid includes "an elastomeric material of the elastomeric cushioning element seep[s] through the stabilization layer to secure an upper surface of the stabilization layer to the elastomeric cushioning element, the elastomeric

material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer” (the “seepage” limitation) (’733 Patent, cl. 1).

17. Because Purple cannot show that the FlexGrid Hybrid practices each and every limitation of any claim of the ’733 Patent, Tempur Sealy is entitled to entry of judgment of non-infringement.

18. Additionally, the ’733 Patent is invalid under at least 35 U.S.C. §§ 101, 102, 103 and/or § 112.

19. During prosecution of the ’733 Patent, on July 8, 2021, the examiner rejected as obvious each of the then-proposed claims of the ’733 Patent under 35 U.S.C. § 103.

20. The examiner based the rejection of the claims on varying combinations of U.S. Patent No. 10,357,113 (“Gladney”), U.S. Patent No. 9,032,571 (“Rancourt”), U.S. Patent App. Pub. No. 2014/0373281 (“Mossbeck”), JPS6134951 (the “JPS951”) and U.S. Patent No. 7,757,322 (“An”).

21. As to each claim proposed during prosecution, the examiner determined that the prior art taught and rendered obvious the proposed limitations of the ’733 Patent. The examiner’s July 8, 2021, Final Rejection is attached hereto as Exhibit B and is incorporated in-full herein by reference.

22. For example, as to exemplary Claim 1 (which was not changed in the final issued patent), the examiner stated in his Final Rejection that “Gladney teaches a mattress assembly, comprising: a base layer (Figure 1; 14); a coil layer (Figure 1; 12) disposed over the base layer, the coil layer comprising a plurality of pocketed coils (Column 3;

lines 16-19 describe pockets around the coils); an upper layer (Figure 1; 22) disposed over the coil layer; a stabilization layer (Figure 2; 22), and a cushioning element (Figure 2; 24) disposed over the upper layer.” (Ex. B at 4.)

23. The examiner further stated in his Final Rejection that “Rancourt teaches the cushioning element is an elastomeric cushioning element (Figure 5, 14 and Column 6; lines 50-67) and a stabilization layer (Column 6; lines 50-67, layer 16 is the stabilization layer equivalent) disposed over the upper layer (Figure 1a; 12 is the upper layer equivalent) the elastomeric cushioning element disposed over the stabilization layer; an elastomeric material of the elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of the stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface (Column 6; lines 57-67 describe the elastomeric layer being placed against a surface of the layer above (the upper layer) and seeping the elastomeric material into the upper layer (12), however in the state before the seeping began, there would be a non-slip surface formed between the two as a result of the elastomeric material's friction with the above surface) on a lower surface of the stabilization layer (Column 6; lines 50-67 describe the elastomeric layer 14 seeping onto 12 over a thickness, thus meaning the silicone would bleed entirely through 16), the reduced slip surface or the non-slip surface positioned against an upper surface of the upper layer, and an outer covering (Column 4; lines 19-25) encasing the base layer, the coil layer, the upper layer, the stabilization layer, and the elastomeric cushioning element.” (*Id.* at 5.)

24. In his September 8, 2021 Response to Final Office Action (attached hereto as Exhibit C), with respect to Claim 1, the prosecuting attorney, Mr. Power, did not contest that the prior art disclosed each of the limitations in the claims except for “an elastomeric material that seeps through a stabilization layer to define a reduced-slip surface or a non-slip surface on a lower surface of the stabilization later”.

25. For example, he did not contest that Gladney taught a mattress assembly comprising a base layer, a coil layer disposed over the base layer, the coil layer comprising a plurality of pocketed coils, an upper layer disposed over the coil layer, a stabilization layer, and a cushioning element disposed over the upper layer. (*See* Exs. B–C.)

26. Nor did he contest that Rancourt taught that the cushioning element is an elastomeric cushioning element and that a stabilization layer is disposed over the upper layer, the elastomeric cushioning element disposed over the stabilization layer. (*See id.*)

27. Instead, in his September 8 Response, the only argument the prosecuting attorney presented for Claim 1 was that none of the prior art references taught “an elastomeric material that seeps through a stabilization layer to define a reduced-slip surface or a non-slip surface on a lower surface of the stabilization later”. (Ex. C at 5–6.)

28. The prosecuting attorney also argued that Claims 2-9 were allowable because they depended on Claim 1 and argued that Claims 16-20 were allowable for largely the same reasons as Claim 1.

29. Based on Applicant’s September 8, 2021 Response, the examiner allowed the claims of the ’733 Patent. (*See* December 7, 2021, Notice of Allowance, Ex. D, at 3.)

30. The examiner explicitly noted in the Notice of Allowance of the '733 Patent that he was allowing Claims 1-20 based upon Applicant's arguments that none of the cited prior art "teaches or suggests an elastomeric material that seeps through a stabilization layer to define a reduced-slip surface or a non-slip surface on a lower surface of the stabilization layer." (*Id.* at 2.)

31. The examiner stated that he found Applicant's argument persuasive and, therefore, found that the prior art references did not disclose "the elastomeric material seeping from the upper surface of the stabilization layer to the lower layer where the elastomeric material defines a reduced slip or non slip surface on the bottom of the stabilization layer positioned against another layer of the mattress". (*Id.* at 3.)

32. After receiving the examiner's Notice of Allowance, Mr. Power responded and stated that: "It is acknowledged that the allowed independent claims are allowable for the reasons specified in the statement of Reasons for Allowance." (Comment on Statement of Reason of Allowance, Ex. E at 1.)

33. At all times from July 8, 2021, when Purple received the Final Rejection to March 7, 2022, when Purple submitted its Comment on Statement of Reason for Allowance, Purple had in its possession prior art that disclosed "the elastomeric material seeping from the upper surface of the stabilization layer to the lower layer where the elastomeric material defines a reduced slip or non slip surface on the bottom of the stabilization layer positioned against another layer of a mattress." (Ex. D at 3.)

34. The Purple Original Mattress includes an "elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper

surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer” as recited in Claim 1 of the ’733 Patent.

35. On information and belief, the Purple Original Mattress was offered for sale in the United States on or before January 22, 2016, and Purple has alleged it was offered for sale starting in 2015.

36. The Purple Original Mattress was therefore in public use, on sale, or otherwise available to the public more than one year before November 17, 2017, the effective filing date of the ’733 Patent.

37. The Purple Original Mattress is prior art to the ’733 Patent.

38. The Purple Original Mattress, and the features thereof, were known to the purported inventors of the ’733 Patent.

39. The below images from the Purple Original Mattress demonstrate that the allegedly novel “elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer”, as recited in Claim 1 of the ’733 Patent”, is present in the Purple Original Mattress.



40. The co-founder and co-CEO of Purple and the inventor of the '733 Patent, Tony Pearce, designed the Purple Original Mattress and was, therefore, aware of its features.

41. After filing the '733 Patent, Purple launched a new mattress it called the “Hybrid Mattress” that Purple contends reads on Claim 1 of the '733 Patent.

42. On information and belief, Purple filed the application that resulted in the '733 Application, in part, to cover its anticipated Hybrid Mattress.

43. On its website, Purple has listed the '733 Patent as covering its Hybrid Mattress.

44. The Hybrid Mattress and the Purple Original Mattress include many of the same layers such as: a base layer; an upper layer; a stabilization layer comprising a scrim fabric; an elastomeric cushioning element seeping through the stabilization layer and creating a non-slip surface; and an outer covering encasing all of the layers.

45. On information and belief, the Purple Original Mattress and the Hybrid Mattress use a similar stabilization layer below the elastomeric cushioning layer.

46. On information and belief, the Hybrid Mattress's elastomeric cushioning layer does not have more seepage through the stabilization layer than the Purple Original Mattress's elastomeric cushioning layer.

47. As Purple claims the '733 Patent covers the Hybrid Mattress, its position is that its Purple Original Mattress also uses and thereby discloses an "elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer" as recited in Claim 1 of the '733 Patent.

48. In combination with the prior art identified by the examiner, and/or additional prior art to be identified by Tempur Sealy, the Purple Original Mattress renders the '733 Patent invalid as obvious under 35 U.S.C. § 103.

49. U.S. Patent No. 10,807,811 (the "'811 Patent), and its previously published application assigned to Purple, U.S. Patent App. Pub. No. US 2017-0251838 (the "'838 Publication) (attached hereto as Exhibit F), discloses the "elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper

surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer” as claimed by the ’733 Patent.

50. The ’838 Publication describes, *inter alia*, a “deformable support layer” which can be comprised of a “hyper-elastic polymer” (*i.e.*, an elastomeric material) which discloses the allegedly novel “seepage” limitation:

“[P]ortions of the deformable support layer 202 ***may seep through (e.g., be melt-fused into, bleed through, push through, leak through, pass through, etc.) the scrim fabric of the lower layer 102.*** For example, when the deformable support layer 202 includes a gel material, portions of the gel material may be heat fused through the lower layer 102 of the mattress topper 100. The portions of the deformable support layer 202 that extend through the scrim fabric of the lower layer 102 ***may create a non-slip surface or reduced slip surface on a lower surface 204 of the lower layer 102*** (e.g., surface that would contact a mattress) of the mattress topper 100.”

(’838 Publication, Ex. F ¶ 0032 (emphases added).)

51. The sole inventor listed on the ’811 Patent is Russel B. Whatcott.

52. On information and belief, Mr. Whatcott was an employee of Purple at the time that the application leading to the ’811 Patent was filed.

53. On information and belief, Tony Pearce did not directly or indirectly supply the “seepage” disclosure contained in the ’838 Publication.

54. On information and belief, Tanner Rick Wheadon did not directly or indirectly supply the “seepage” disclosure contained in the ’838 Publication.

55. On information and belief, Lars Christen Hamilton did not directly or indirectly supply the “seepage” disclosure contained in the ’838 Publication.

56. The '838 Publication is prior art to the '733 Patent.

57. On information and belief, Tony Pearce designed the Purple Original Mattress to use seepage of the elastomeric layer through the stabilization layer to create a non-slip surface in the stabilization layer of the mattress.

58. On information and belief, Purple's research and development department's design plan for the Purple Original Mattress includes the use of seepage of an elastomeric layer through a stabilization layer to create a non-slip surface was used to manufacture mattresses at Purple.

59. On information and belief, when Mr. Power added the "seepage" limitation to Claim 1 of the '733 Patent, he conducted an inventorship investigation to determine if the inventorship for '733 Patent was correct considering the added limitation.

60. On information and belief, when conducting his "seepage" inventorship investigation, Mr. Power asked the inventors on the '733 Patent about how they invented the technology described in the "seepage" limitation.

61. On information and belief, when conducting his "seepage" inventorship investigation, Mr. Power learned or confirmed that the Purple Original Mattress used the technology claimed "seepage" limitation.

62. On information and belief, Tony Pearce knew that the allegedly novel "seepage" limitation was critical to the patentability of the '733 Patent.

63. On information and belief, Tony Pearce also knew that if the examiner of the '733 Patent had been aware that prior art disclosed an elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of a stabilization layer

to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer the examiner would not have allowed the '733 Patent.

64. Tony Pearce, as an inventor of the '733 Patent, had a duty of candor to the Patent Office, which required him to disclose material prior art during prosecution.

65. On information and belief, Mr. Power informed Tony Pearce of his duty of candor and his duty to disclose any material prior art including the public sale of any products more than one year before the filing of the application that issued as the '733 Patent.

66. On information and belief, Mr. Power also informed Tony Pearce of his ongoing duty to disclose material prior art during prosecution of the '733 Patent.

67. Despite that duty, Tony Pearce, on information and belief, deliberately chose to withhold the existence of the Purple Original Mattress with the specific intent to deceive the Patent Office into granting the '733 Patent based on false representations of novelty.

68. On information and belief, prior to filing the '733 Patent, Purple was designing its new Hybrid Mattress that included coils.

69. On information and belief, Purple filed the '733 Patent, in part, to cover its new Hybrid Mattress.

70. On information and belief, Mr. Power was aware at the time of filing the application that issued as the '733 Patent it was intended to cover the new Hybrid Mattress that Purple was designing.

71. During prosecution of the '733 Patent, when Mr. Power added the “seepage” limitation to Claim 1, Purple had already started selling its Hybrid Mattress.

72. On information and belief, at or before the adding the “seepage” limitation to Claim 1 of the '733 Patent, Mr. Power discussed with Purple personnel whether the seepage limitation would cover the Hybrid Mattress.

73. According to Purple, shortly after the '733 Patent issued, Purple listed it on its website as covering its Hybrid Mattress.

74. On information and belief, Mr. Power reviewed Purple’s products and advised Purple on the listing of the '733 Patent on Purple’s website.

75. Mr. Power also prosecuted United States Patent Nos. 10,661,492 and 11,179,873 for Purple.

76. These patents are listed on Purple’s Website as covering the Purple Original Mattress.

77. On information and belief, Mr. Power advised on the propriety of listing these patents as covering the Purple Original Mattress.

78. On information and belief, Mr. Power was familiar with the design of Purple Original Mattress.

79. Mr. Power, in his role as prosecuting attorney of the '733 Patent, had a duty of candor to the Patent Office which required him to disclose all known prior art to the Patent Office.

80. As prosecuting attorney for many of Purple’s patents, Mr. Power was aware of the features present in the prior art products manufactured by Purple, including the use

of an “elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer”.

81. And as a prosecuting attorney for the '811 Patent² (the issued patent corresponding to the '838 Publication), Mr. Power knew that the disclosures of the '838 Publication included the disclosure of the allegedly novel “elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer”.

82. Mr. Power was therefore aware that the '838 Publication disclosed the critical “elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer” element of the '733 Patent.

83. Mr. Power also knew that the allegedly novel “elastomeric material of [an] elastomeric cushioning element seeping through the stabilization layer to secure an upper surface of [a] stabilization layer to the elastomeric cushioning element, the elastomeric

² See, e.g. '811 Patent, May 26, 2020, Applicant Arguments/Remarks Made in an Amendment, Ex. G (including a signature from Brick G. Power).

material exposed and defining a reduced slip surface or a non-slip surface on a lower surface of the stabilization layer” was critical to the patentability of the ’733 Patent over the prior art. Indeed, he himself explicitly made the argument that the above limitation was *the* novel and distinguishing feature of the ’733 Patent. (Ex. C at 5–6.)

84. Mr. Power therefore knew that if the examiner of the ’733 Patent had been aware of the Purple Original Mattress or the ’838 Publication, the ’733 Patent would not have been allowed.

85. Despite his duty of candor to the Patent Office, Mr. Power deliberately chose to withhold the existence of the Purple Original Mattress and the ’838 Publication with the specific intent to deceive the Patent Office into granting the ’733 Patent based on false representations of novelty.

86. The claims of the ’733 Patent are therefore unenforceable for inequitable conduct.

EXISTENCE OF AN ACTUAL CONTROVERSY

87. This is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

88. As demonstrated by the FAC, Purple has asserted infringement of the ’733 Patent against Tempur Sealy and its FlexGrid Hybrid product.

89. A justiciable controversy therefore exists between Tempur Sealy and Purple as to whether Tempur Sealy’s products infringe any claims of the ’733 Patent, whether the claims of the ’733 Patent are valid and whether the claims of the ’733 Patent are enforceable.

COUNT I (DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

90. The allegations set forth in paragraphs 1–89 are hereby realleged and incorporated by reference herein.

91. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of non-infringement.

92. A judicial declaration is necessary and appropriate so that Tempur Sealy may ascertain its rights regarding its FlexGrid Hybrid and the '733 Patent.

93. Tempur Sealy is entitled to a declaratory judgment that Tempur Sealy has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claims of the '733 Patent under 35 U.S.C. § 271.

COUNT II (DECLARATORY JUDGMENT OF INVALIDITY)

94. The allegations set forth in paragraphs 1–89 are hereby realleged and incorporated by reference herein.

95. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of invalidity.

96. A judicial declaration is necessary and appropriate so that Tempur Sealy may ascertain its rights regarding its FlexGrid Hybrid and the '733 Patent.

97. Tempur Sealy is entitled to a declaratory judgment that each of the claims of the '733 Patent are invalid under one or more provisions of 35 U.S.C. §§ 101, 102, 103, and/or 112.

COUNT III (DECLARATORY JUDGMENT OF UNENFORCEABILITY)

98. The allegations set forth in paragraphs 1–89 are hereby realleged and incorporated by reference herein.

99. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of unenforceability.

100. A judicial declaration is necessary and appropriate so that Tempur Sealy may ascertain its rights regarding the enforceability of the '733 Patent.

101. Tempur Sealy is entitled to a declaratory judgment that the '733 Patent is unenforceable due to inequitable conduct before the Patent Office, as further described with particularity *supra*.

PRAYER FOR RELIEF

WHEREFORE, Tempur Sealy respectfully requests that this Court enter judgment in its favor and against Purple as follows:

- A. Adjudging that Tempur Sealy has not infringed and is not infringing, either directly or indirectly, any valid and enforceable claim of the '733 Patent, in violation of 35 U.S.C. § 271;
- B. Adjudging that each of the claims of the '733 Patent is invalid;
- C. Adjudging that the claims of the '733 Patent are unenforceable;
- D. Adjudging that Defendant and each of its officers, directors, agents, counsel, servants, employees, and all of persons in active concert or participation with any of them, be restrained and enjoined from alleging, representing, or

otherwise stating that Tempur Sealy infringes any claims of the '733 Patent or from instituting or initiating any action or proceeding alleging infringement of any claims of the '733 Patent against Tempur Sealy or any customers, manufacturers, users, importers, or sellers of the FlexGrid Hybrid;

- E. Declaring Tempur Sealy as the prevailing party and this case as exceptional, and awarding Tempur Sealy its reasonable attorneys' fees, pursuant to 35 U.S.C. § 285;
- F. That Purple be ordered to pay all fees, expenses, and costs associated with this action; and
- G. Awarding such other and further relief as this Court deems just and proper.

Dated: July 31, 2023

Respectfully submitted,

/s/ N. Dean Powell, Jr.

N. Dean Powell, Jr. (NC Bar No. 35511)
KILPATRICK TOWNSEND &
STOCKTON LLP
1001 West Fourth Street
Winston-Salem, NC 27101
(336) 607-7347 (telephone)
(336) 607-7500 (facsimile)
dpowell@kilpatricktownsend.com

Sharonmoyee Goswami (*pro hac vice*)
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
sgoswami@cravath.com

Brian O'Reilly (*pro hac vice*)
O'REILLY IP PLLC
26 Broadway, 8th Floor
New York, NY 10004
(212) 540-0650 (telephone)
Brian@oreillyip.com

*Counsel for Defendants Tempur Sealy
International, Inc., Sealy Technology
LLC and Sealy Mattress Manufacturing
Co.*

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July 2023, I electronically filed the foregoing Answer, Affirmative Defenses and Counterclaims with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ N. Dean Powell, Jr.

N. Dean Powell, Jr.