

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

PURPLE INNOVATION, LLC,

Plaintiff,

v.

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

Defendants.

CASE NO. 1:23-CV-00257

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Purple Innovation, LLC (“Purple”) brings this action for patent infringement under 35 U.S.C. § 271 against defendants Tempur Sealy International, Inc., Sealy Technology LLC, and Sealy Mattress Manufacturing Co., LLC (collectively, “Sealy” or “Defendants”), and alleges as follows:

NATURE OF THE ACTION

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.

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,

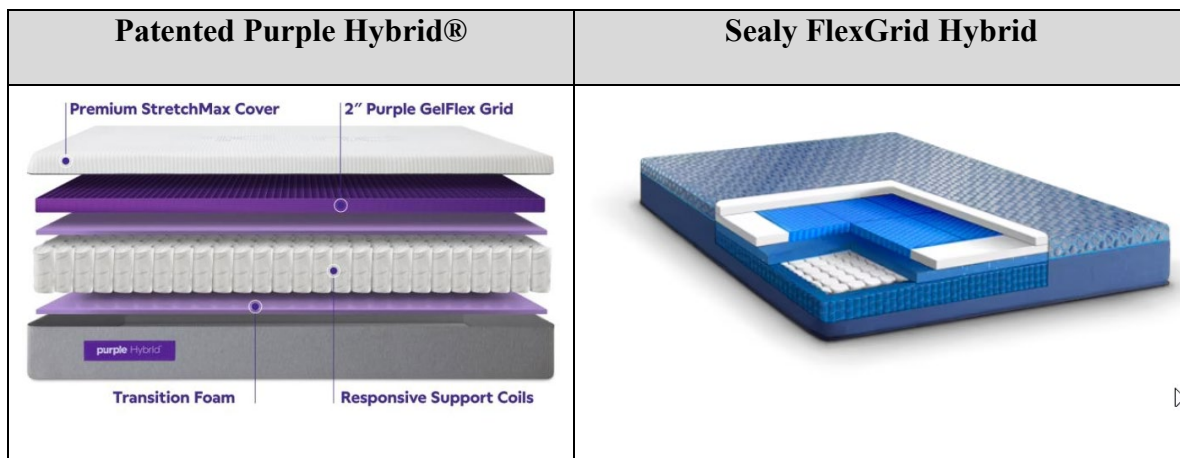
cushions, frames, sheets and more. Purple's products are the result of over 25 years of innovation and investment in proprietary and patented comfort technologies and the development of their own manufacturing processes. Purple's proprietary technologies underpin many of their mattress products and provide a range of benefits that differentiate Purple's mattresses from its competitors' products.

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.

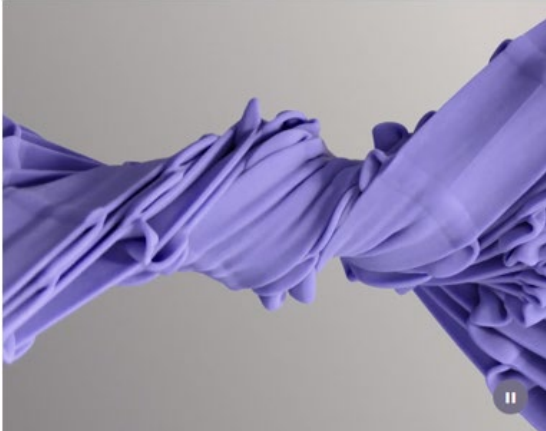
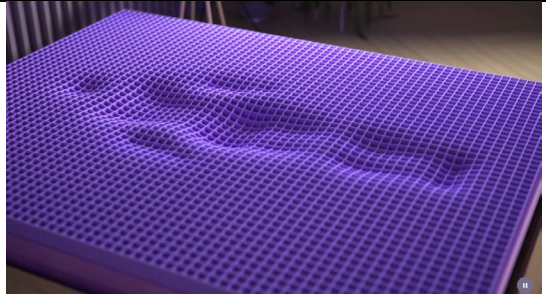
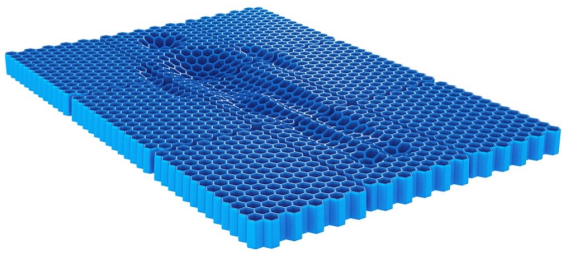
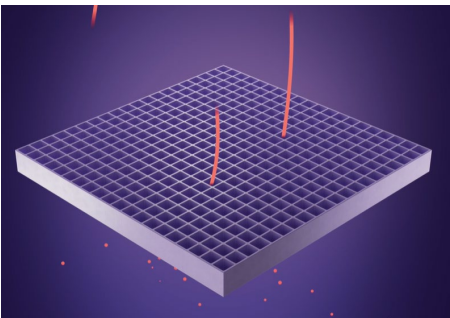
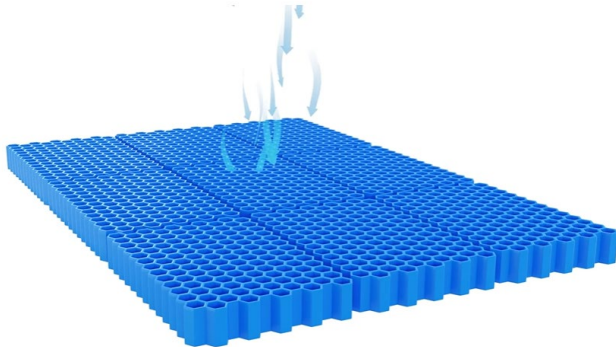
4. Purple's focus on innovation and R&D investment have resulted in widespread recognition in the sleep and comfort industry. For example, J.D. Power ranked Purple #1 in customer satisfaction, comfort and support for the bed-in-a-box category in 2019.

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.

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:



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
	

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

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

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.

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.

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.

**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.

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.

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.

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).

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.

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.

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.

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

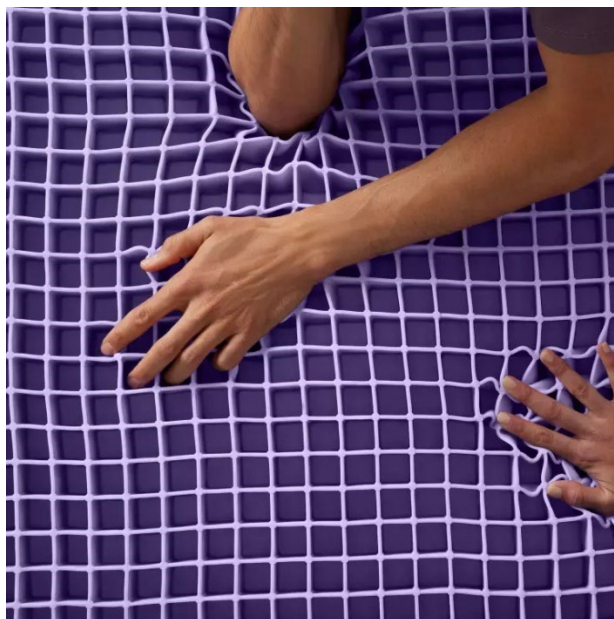
Verified Buyer

03/16/2022

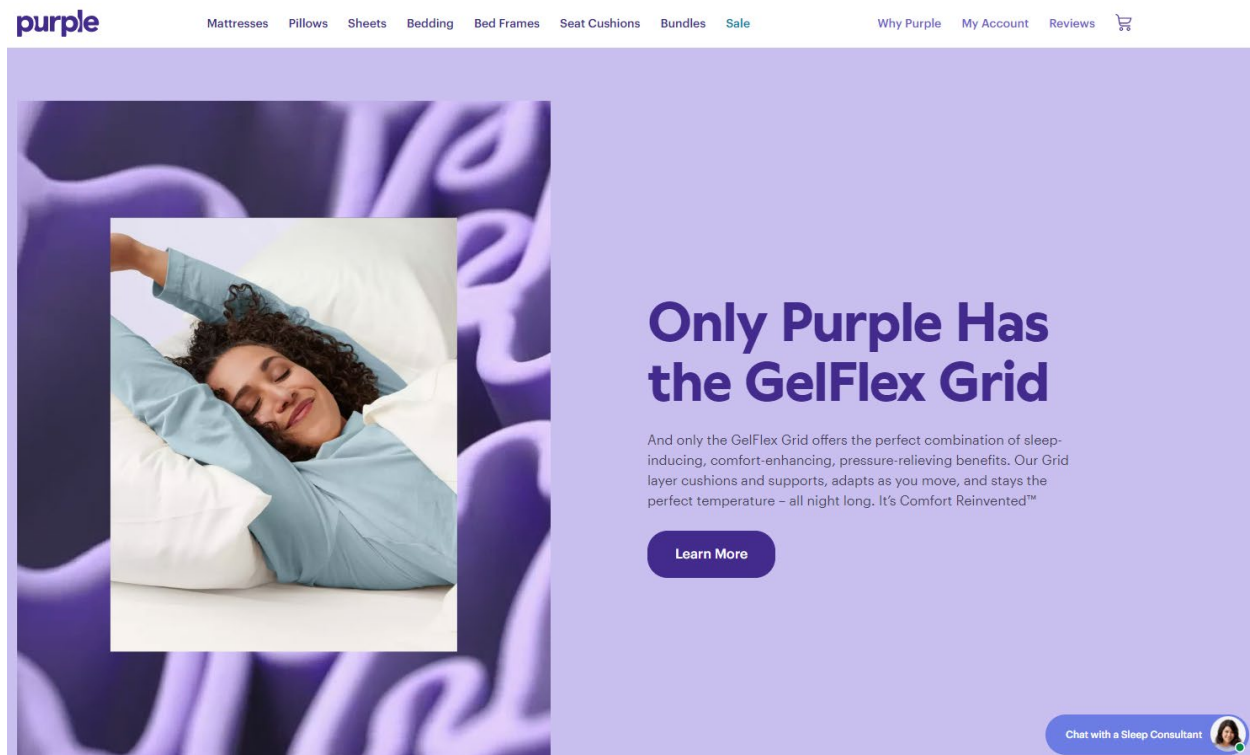
Original purple mattress w/split king adjustable base

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!

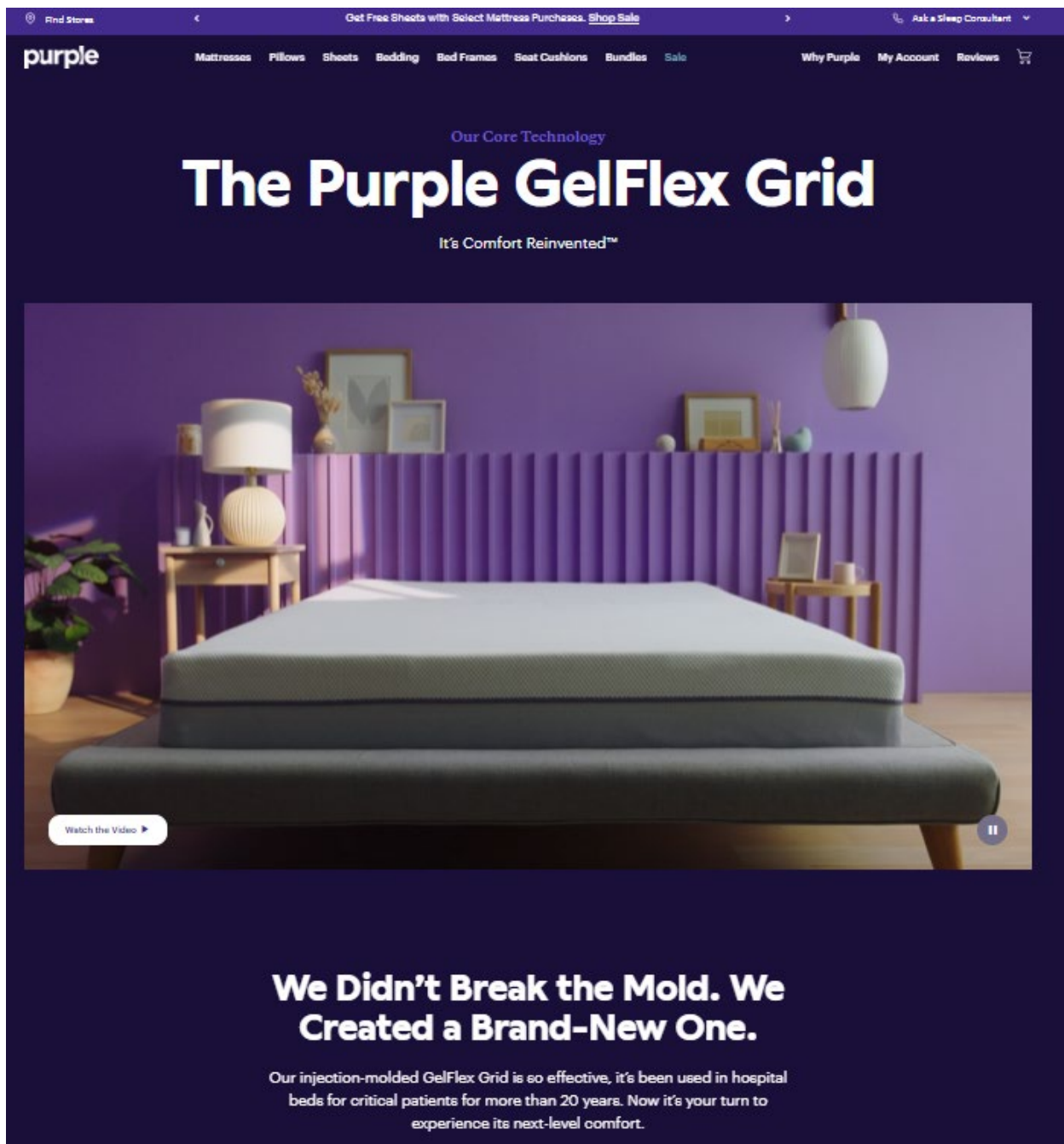
21. An example image of the GELFLEX® GRID technology used in Purple's mattresses is shown below.



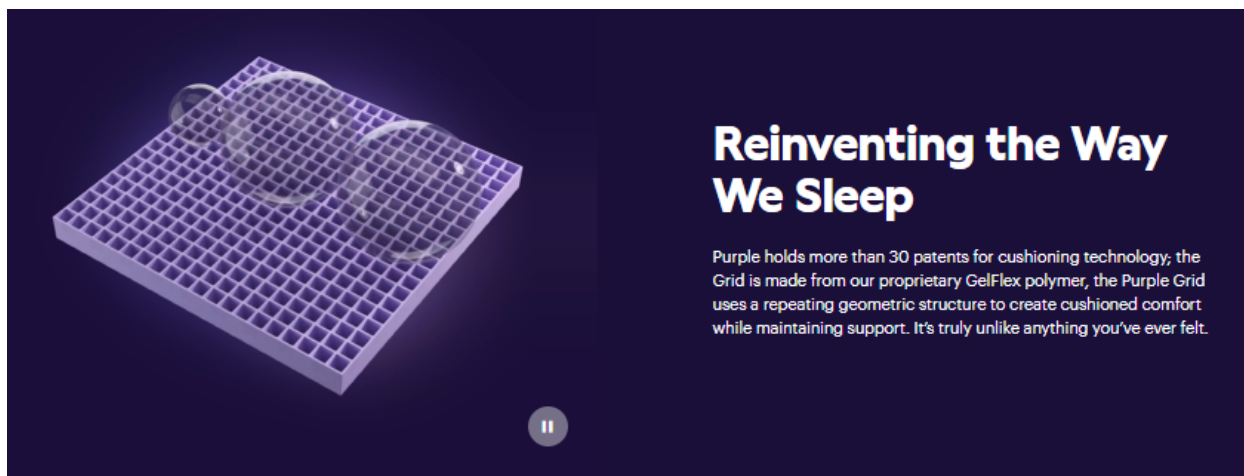
22. Purple advertises its GELFLEX® GRID technology and related mattress products prominently on its website, precisely because they are an important factor of what sets Purple apart from the competition. For instance, Purple’s homepage, <https://purple.com/>, includes the following, which also features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



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.

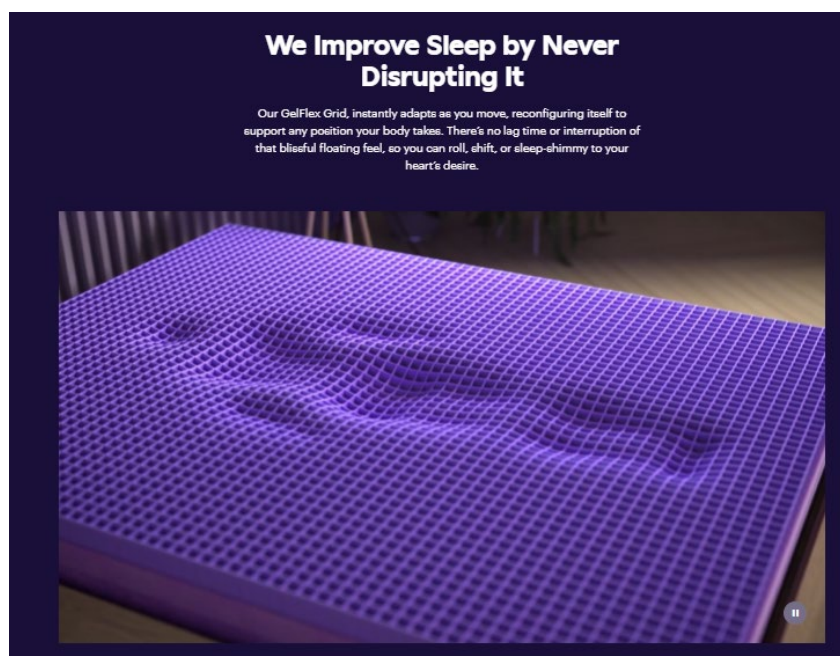


24. Purple's website also specifically assures consumers, and warns would-be competitors, that Purple "holds more than 30 patents for cushioning technology."



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>.

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.



Softness or Support? You Don't Have to Choose

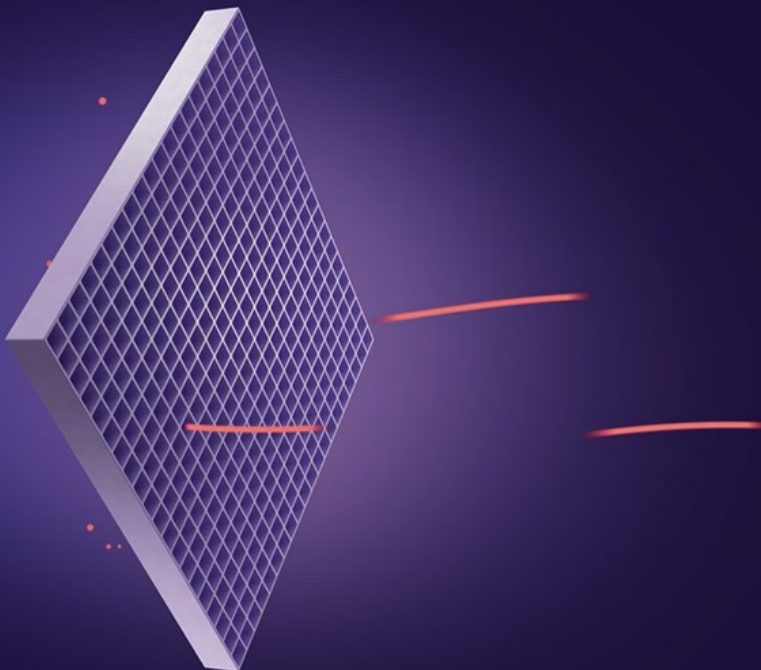
The Purple GelFlex Grid is engineered to be both soft and supportive – because that's what your body needs. Its unique design creates hundreds of columns that work together to support broad surfaces like your back, but give way under concentrated weight to gently cradle areas like shoulders and hips.

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!

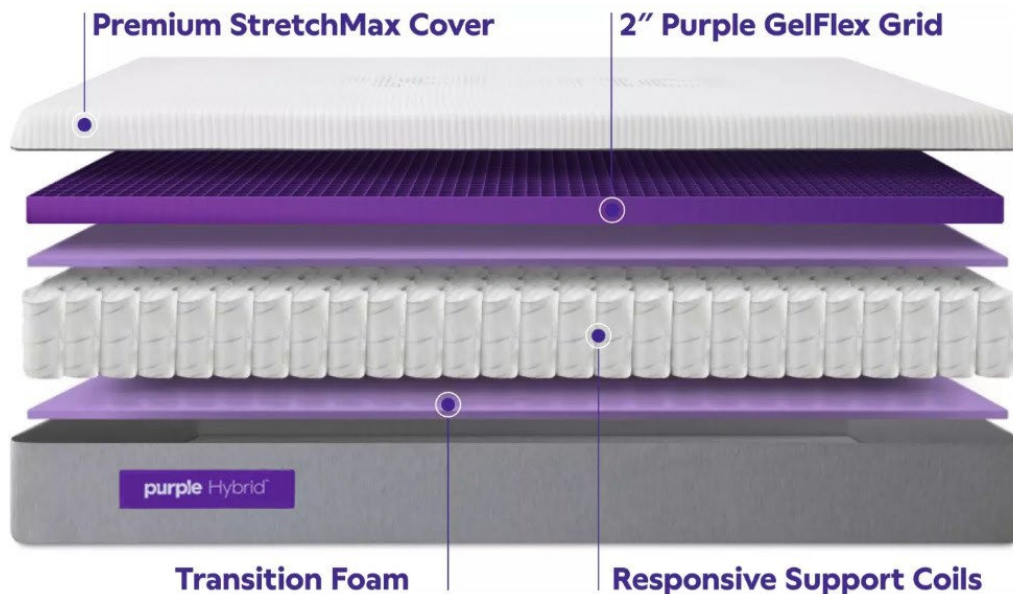


Is It Durable?

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!

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.

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



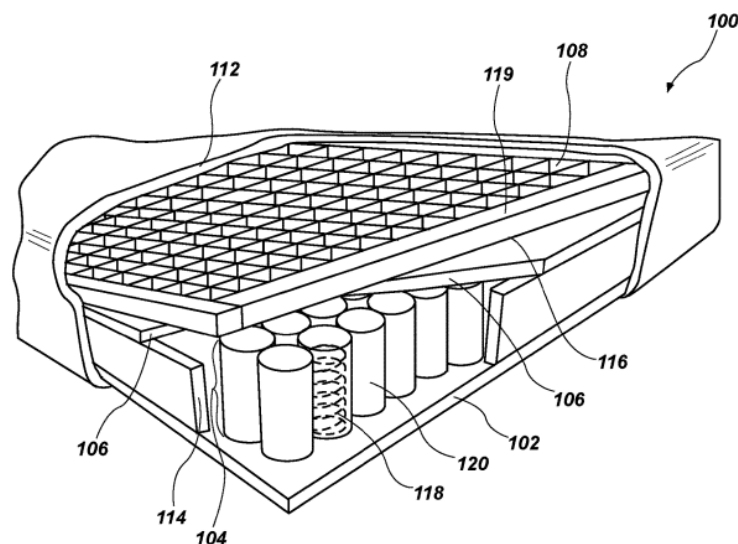
29. To protect its investment and intellectual property, on November 17, 2017, Purple applied for what became the '733 Patent with the U.S. Patent and Trademark Office (“USPTO”).

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**.

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

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.

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.

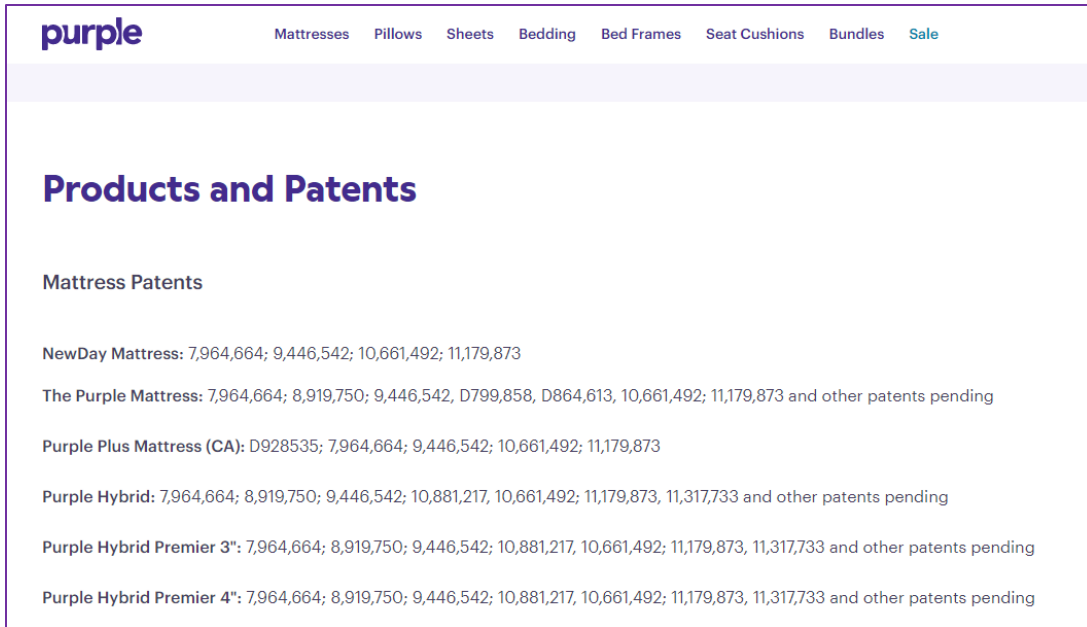


34. The '733 Patent states that, “[i]n some embodiments, the mattress assembly 100 may include a stabilization material 116 between the elastomeric cushioning element 108 and the upper layer 106.” *Id.* at 4:38–40.

35. The '733 Patent is valid and enforceable.

PURPLE’S NOTICE TO POTENTIAL INFRINGERS

36. 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).



37. 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/> (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.

38. 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.

39. 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.

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

40. 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.

41. 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.

42. 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.

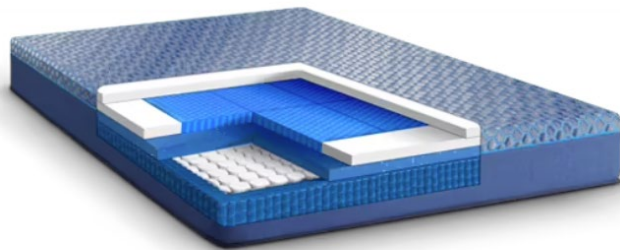
43. On information and belief, Sealy manufactures, markets, offers for sale, and sells mattresses in the United States, including the Infringing Products.

44. 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.

45. 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.

46. 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 "FlexGrid™" line. On information and belief, the Infringing Products (including at least the Hybrid construction of the Sealy® FlexGrid™ mattress line) infringes the '733 Patent.

47. 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.

48. 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.

49. 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.

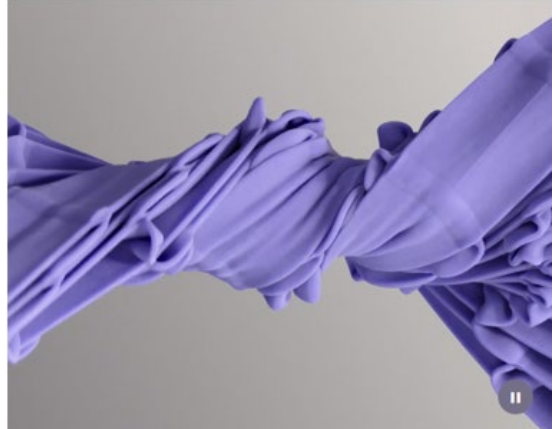
50. Just like Purple, Sealy touts that its gel grid layer in the Infringing Products provide a “cool night’s rest,” as seen in the below examples from Sealy’s website.

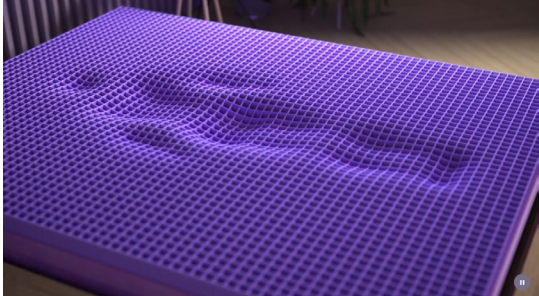
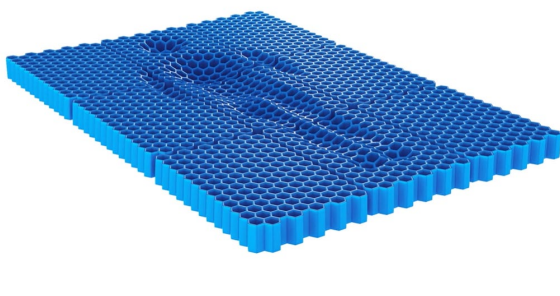
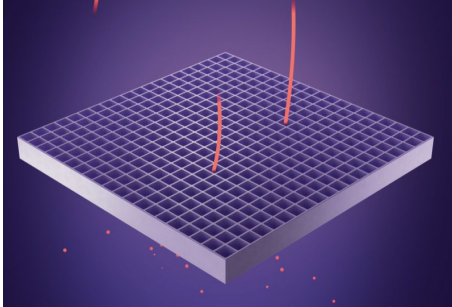
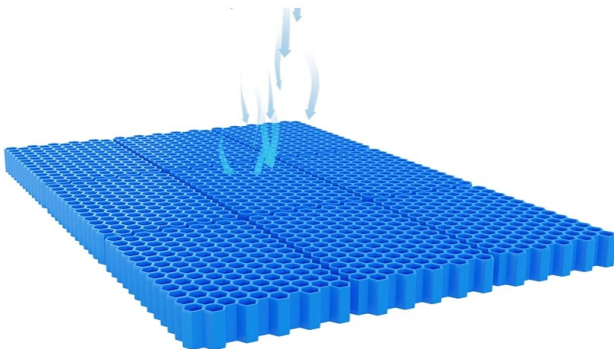
The screenshot displays the Sealy website's product page for the FlexGrid™ mattress. At the top, the Sealy logo is on the left, and navigation links for 'Shop', 'Discover Sealy Sale', 'Find a Retailer', 'Support', and a shopping cart icon are on the right. The main image shows a man and a woman lying on a blue and white patterned mattress on a grey bed frame. A yellow banner in the top left corner of the image reads 'Exclusive HexGel™ Support'. To the right of the image, the product name 'Sealy® FlexGrid™' is displayed with a 5-star rating and '6 Reviews'. Below this, it states '23K+ Sealy® 5-Star Reviews' with a checkmark icon. The description reads: '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.' Under the 'Construction' section, there are two buttons: 'Foam' and 'Hybrid'. The 'Size' section shows 'Queen' with a right arrow. The pricing section shows '\$2,149.00' followed by a vertical line, 'or', another vertical line, and '\$89.55/mo.² for 24 months¹ (total payments of \$2,149.00)'. A blue circular icon with a white speech bubble is at the bottom right.



51. 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.”

52. 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.

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”
	

JURISDICTION

53. 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).

54. 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.

55. 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.

56. 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.

VENUE

57. 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.

COUNT I — INFRINGEMENT OF THE '733 PATENT

58. Purple incorporates and realleges Paragraphs 1 through 57 of this Complaint as if fully set forth herein.

59. 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.

60. 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.

61. 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 this Complaint, yet continued infringing the '733 Patent.

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

REQUEST FOR RELIEF

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

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

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

66. 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;

67. 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;

68. 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;

69. 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

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

DEMAND FOR JURY TRIAL

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

Respectfully submitted this the 24th day of March, 2023.

/s/ Alan M. Ruley

Alan M. Ruley (Bar No. 16407)
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