

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN NATIONAL MANUFACTURING INC.,
Petitioner,

v.

SLEEP NUMBER CORPORATION
f/k/a SELECT COMFORT CORPORATION,
Patent Owner.

Case No. IPR2019-00500

Patent No. 9,737,154

**JOINT MOTION TO EXPUNGE CONFIDENTIAL INFORMATION
UNDER 37 C.F.R. § 42.56**

I. THE RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.56, and authorization received from the Board’s email of January 26, 2023, Petitioner American National Manufacturing, Inc. (“Petitioner”) and Patent Owner Sleep Number Corporation (“Patent Owner”) (collectively “the Parties”)¹ jointly move for an order expunging from the record in this *inter partes* review (“IPR”) the following confidential documents filed under seal (collectively, the “Identified Documents”)²:

Sealed Exhibits 1034, 1060, 2050, 2051, 2053, 2054, and 2057;

Unredacted Exhibits 1033, 1039, 1051, 1055, 1056, 1057, 2026, 2030, Supp. 2030, 2055, and 2056;

Sealed Papers 105, 107, and 108; and

The unredacted version of Patent Owner’s Response (Paper 46).

¹ The Parties are also associated with IPR2019-00497 and -00514 (“Related IPRs”), and a stayed case in the Central District of California (“District Court Proceeding”).

² Several of the Identified Documents are also being addressed in a similar pending motion to expunge filed on October 22, 2022 in related IPR2019-00514, although the exhibit numbers may vary. *See* IPR2019-00514, Paper 102.

This information is confidential information under the Parties' Joint Stipulated Protective Order and the District Court's Modified Protective Order ("District Court Order") (*see* Paper 39 as Ex. 2024 (original) and Paper 106 (revised)). On balance, the confidential nature and treatment of the documents and information used in this IPR pursuant to the District Court Order, and the minimal impact expungement would have on the public's understanding of the file history of this IPR, weigh in favor of granting this motion to expunge.

The Parties respectfully request a conference call with the Board to discuss these issues before any information becomes irreversibly public. If the Board deems expungement of any of the confidential information would harm the public's interest, the Parties request any such information remain under seal.

II. ARGUMENT IN SUPPORT OF THE RELIEF REQUESTED

Parties may submit evidence consisting of confidential information in IPRs under a protective order, and at the end of the proceeding "[c]onfidential information that is subject to a protective order ordinarily would become public 45 days after final judgment in a trial." *See* CTPG at 21-22. Public policy supports access to the information submitted in IPRs, but "confidential information" is protected from disclosure. 35 U.S.C. § 316(a)(7). Accordingly, "[a] party seeking to maintain the confidentiality of information...may file a motion to expunge the information from

the record prior to the information becoming public.” CTPG at 22; *see also* 37 C.F.R. § 42.56. A decision to expunge should balance “the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history.” CTPG at 22.

A. Procedural History

This IPR includes confidential information exchanged among the Parties pursuant to a protective order, or submitted as evidence under the protective order. Petitioner is a private company, and most of this confidential information belongs to Petitioner. The Parties filed a Joint Stipulation for Entry of a Stipulated Protective Order (“Stipulated PO”) along with a proposed stipulated protective order. Paper 39; Ex. 2024 (proposed Stipulated PO). The Stipulated PO modifies the Board’s default protective order to account for aspects of the District Court’s Order governing the Parties, and the use of confidential information from the District Court Proceeding in this IPR. Paper 39.

On October 23, 2019, Patent Owner filed a discovery motion (Paper 47) and a Corrected Unopposed Motion to Seal (Paper 44³) in this IPR, and in the Related IPRs, and thereafter Petitioner filed an Opposition (Paper 49) in this IPR, and in the

³ An Unopposed Motion to Seal (Paper 43) was filed first.

Related IPRs. The motion was to Seal Exhibits 2050, 2051, 2053-2057, 2026 (which refers to Exhibits 2050, 2051, 2053, and 2054), and 2030 (which refers to Exhibit 2057), and Patent Owner's Response (under seal) (Paper 46). Paper 44. Redacted versions of Exhibits 2026, 2030, 2055, 2056, and Paper 46 (as Paper 45) were filed. Exhibits 2050, 2051, 2053, 2054, and 2057 were filed under seal only. The Opposition included a declaration (Ex. 1033) referring to Petitioner's product sales information (Ex. 1034). Paper 49. Exhibit 1033 was filed under seal and as a redacted version, and Exhibit 1034 was filed under seal only.

On December 13, 2019, Petitioner filed a deposition transcript (Exhibit 1039) as a redacted version and under seal pursuant to 37 CFR §42.53(f)(7).

The Board's January 6, 2020, Order denied the discovery motion (Paper 47). Paper 67 ("Discovery Order"). The Discovery Order refers "only to documents filed in IPR2019-00497," and did not directly cite to Exhibits 1033-1035. *Id.* at 2.

On January 22, 2020, Petitioner filed an Unopposed Motion to Seal Exhibits 1055, 1056, 1057, and 1060. Paper 70. Redacted versions of Exhibits 1055, 1056, and 1057 were filed. Exhibit 1060 was filed under seal only.

On May 6, 2020, Patent Owner filed an unopposed Motion to Seal Supplemental Exhibit 2030 (which refers to Exhibit 2057). Paper 98. A redacted version of Supplemental Exhibit 2030 was filed.

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