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18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**  
20 **EASTERN DIVISION**

21 SLEEP NUMBER CORPORATION,

22 Plaintiff,

23 v.

24 SIZEWISE RENTALS, LLC,

25 Defendant.

26 SLEEP NUMBER CORPORATION,

27 Plaintiff,

28 v.

AMERICAN NATIONAL  
MANUFACTURING, INC.,

Defendant.

Case No. 5:18-cv-00356 AB (SPx)  
5:18-cv-00357 AB (SPx)

**PLAINTIFF'S FIRST  
SUPPLEMENTAL RESPONSES TO  
DEFENDANTS' FIRST SET OF  
INTERROGATORIES (NOS. 1-9)**

1 repositories has been and is being searched through the use of search terms and  
2 custodians in an effort to locate responsive documents and information that Plaintiff  
3 has agreed to produce or provide in this action. In addition, Plaintiff has contacted  
4 third parties, including the inventors of the patents-in-suit and source code vendors,  
5 to obtain relevant documents and information. With respect to Plaintiff's search for  
6 source code specifically, Plaintiff refers Defendants to the Declaration of Paul James  
7 Mahoney dated November 21, 2018 (SN\_0026378), the Declaration of James Edwin  
8 Giffit dated November 21, 2018 (SN\_0026394), the Declaration of Cory Grabinger  
9 dated December 19, 2018 (SN\_0026396), and the Declaration of Elizabeth A. Patton  
10 dated December 18, 2018 (SN\_0026380), which collectively detail Plaintiff's efforts  
11 at locating and providing source code for Defendants' inspection and review.

12

13 **INTERROGATORY NO. 3:** For each claim or defense you assert in this lawsuit  
14 (including for your contention(s) that the patents-in-suit are infringed, valid, and  
15 enforceable), describe in detail on an element-by-element basis your factual and legal  
16 bases, including the identification of all facts and documents that support or contradict  
17 your contentions and all persons with knowledge of the same; and all your factual and  
18 legal bases related to the authenticity and admissibility of such documents. At  
19 minimum, your initial response should describe at least your Rule 11 basis (including  
20 describing all testing evaluation, analysis, or examination of any product that you  
21 accuse of infringement) and, after reasonable discovery, your supplemental response  
22 should describe all evidence that you may rely to oppose, e.g., a no-evidence motion  
23 for summary judgment.

24 **RESPONSE:** Plaintiff incorporates by reference each of the General  
25 Objections and specifically objects to this Interrogatory as comprising multiple  
26 discrete subparts, which shall count as multiple Interrogatories under Federal Rule of  
27 Civil Procedure 33(a)(1). Plaintiff further objects that this Interrogatory is a

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1 contention interrogatory posed early in the litigation. Defendants have not set forth  
2 the need for early contention interrogatories, or how an earlier response to a  
3 contention interrogatory assists the goals of discovery. Additionally, some of the  
4 information required in order to respond to this contention interrogatory is in the  
5 custody of Defendants or third parties. Further, early contention interrogatories, such  
6 as this one, call for attorney-client privileged and work-product protected materials  
7 and information as well as information that will be the subject of expert testimony  
8 and expert reports.

9       Subject to and without waiving the foregoing General or Specific Objections,  
10 and subject to Plaintiff's understanding that this Interrogatory relates to Plaintiff's  
11 pending claims and affirmative defenses, Plaintiff responds as follows: Plaintiff  
12 conducted a pre-suit investigation and analysis that provided it with the factual and  
13 legal basis for the claims it has asserted against Defendants. Additionally, with  
14 respect to the '172 Patent, Plaintiff's factual and legal basis also arises from  
15 information, documents, and expert testimony regarding Defendants' products  
16 obtained during the course of the International Trade Commission ("ITC") action it  
17 initiated against Defendants, the determinations made by the ITC regarding  
18 infringement by Defendants' products, and the determinations made by the United  
19 States Patent and Trademark Office with respect to validity and enforceability of the  
20 '172 Patent, including the fact that it previously survived both a Reexamination and  
21 an *Inter Partes* Review. With respect to the '154 and '747 Patents, Plaintiff's factual  
22 and legal basis also arises from information, documents, and expert testimony  
23 regarding Defendants' products obtained during the course of the ITC action as well  
24 as the Declaration of John Abraham dated September 5, 2017, Bates number  
25 SN\_0008944. With respect to Plaintiff's affirmative defenses, Plaintiff refers  
26 Defendant to each of the foregoing and incorporates by reference its response to  
27 Interrogatory No. 4 below, its briefing in support of its motion to dismiss, and the

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1 presumption of validity for each of the patents-in-suit set forth in 35 U.S.C. § 282. In  
2 addition, Plaintiff states that Defendants' counterclaims are barred by various  
3 equitable doctrines, including equitable estoppel barring their inequitable conduct and  
4 civil conspiracy counterclaims and related affirmative defenses.

5 Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiff has produced and  
6 will produce documents that support its claims and affirmative defenses. Plaintiff  
7 also incorporates by reference its Amended Complaint and its Disclosure of Asserted  
8 Claims and Infringement Contentions and accompanying Exhibits, which contain  
9 element-by-element descriptions of Defendants' infringement and which will be  
10 supplemented after an inspection of Defendants' source code as stipulated between  
11 the Parties and after Defendants make a fulsome document production.

12 Discovery is on-going and Plaintiff acknowledges its duty to supplement its  
13 response to this interrogatory and will do so in accordance with the Court's scheduling  
14 order and the local rules.

15 **FIRST SUPPLEMENTAL RESPONSE:**

16 Plaintiff incorporates by reference the foregoing Response, including  
17 objections, and further responds as follows:

18 Plaintiff's counsel, Nigel Jones, and George Edwards performed an inspection  
19 of Defendants' source code on October 9-11, 2018 and November 7, 2018. As a result  
20 of those inspections, Plaintiff determined that various source code utilized in  
21 Defendants' products supports infringement of the '172, '152, and '747 Patents and  
22 therefore Plaintiff supplemented its claim charts. Plaintiff refers Defendants to the  
23 Exhibits to its Infringement Contentions served on December 5, 2018, which contain  
24 an element-by-element basis for Plaintiff's claims of infringement. The persons  
25 knowledgeable about the factual and legal bases for Plaintiff's claims include those  
26 identified in response to Interrogatory No. 1. The documents supporting the factual  
27 and legal bases for Plaintiff's claims have been and are being produced in this action,

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1 including by Plaintiff, Defendants, and third parties. Plaintiff also intends to rely upon  
2 deposition testimony, including expert testimony. In addition, Plaintiff intends to rely  
3 upon expert reports, but because a different deadline for those disclosures have been  
4 ordered by the Court, a longer period for responding to these requests has been  
5 ordered by the Court. See Fed. R. Civ. P. 33(b)(2)(“A shorter or longer time [for  
6 responding to Interrogatories] may be... ordered by the court.”). Plaintiff will produce  
7 the information requested in this interrogatory in accordance with the Court’s orders  
8 and the local patent rules and hereby incorporates those future disclosures by  
9 reference.

10 Discovery is still on-going and Plaintiff acknowledges its duty to further  
11 supplement its response to this interrogatory and will do so in accordance with the  
12 Court’s scheduling order and the local rules.

13  
14 **INTERROGATORY NO. 4:** For each affirmative defense and counterclaim  
15 asserted in this lawsuit, describe in detail on an element-by-element basis your factual  
16 and legal bases for opposing each defense or counterclaim, including the  
17 identification of all facts and documents that support or contradict your contention  
18 and all persons with knowledge of the same; and all your factual and legal bases  
19 related to the authenticity and admissibility of such documents. At minimum, your  
20 initial response should describe at least your Rule 11 basis and, after reasonable  
21 discovery, your supplemental response should describe all evidence that you may rely  
22 to oppose, e.g., a no-evidence motion for summary judgment.

23 **RESPONSE:** Plaintiff incorporates by reference each of the General Objections and  
24 specifically objects to this Interrogatory as comprising multiple discrete subparts,  
25 which shall count as multiple Interrogatories under Federal Rule of Civil Procedure  
26 33(a)(1). Plaintiff further objects that this Interrogatory is a contention interrogatory  
27 posed early in the litigation. Defendants have not set forth the need for early  
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