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**From:** Patton, Elizabeth A. <epatton@foxrothschild.com>  
**Sent:** Monday, October 14, 2019 10:18 AM  
**To:** Elliott, Kyle L.; Tuttle, Kevin; Bear, Brian; Hare, Jaspal  
**Cc:** Toft, Lukas; Nath, Archana; Allee, J. Lori  
**Subject:** RE: IPR2019-514, -500, and -497 (ANM v. Sleep Number)

Kyle,

We accept your revisions and will send this email shortly to the Board.

Liz

**Elizabeth Patton**

Partner

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**From:** Elliott, Kyle L. <KElliott@spencerfane.com>  
**Sent:** Monday, October 14, 2019 10:07 AM  
**To:** Patton, Elizabeth A. <epatton@foxrothschild.com>; Tuttle, Kevin <ktuttle@spencerfane.com>; Bear, Brian <bbear@spencerfane.com>; Hare, Jaspal <jhare@spencerfane.com>  
**Cc:** Toft, Lukas <ltoft@foxrothschild.com>; Nath, Archana <anath@foxrothschild.com>; Allee, J. Lori <JAllee@spencerfane.com>; Curti, Jennifer L. <jcurti@foxrothschild.com>  
**Subject:** [EXT] RE: IPR2019-514, -500, and -497 (ANM v. Sleep Number)

Hello Liz:

Here are the suggested revisions. Please let me know if you have any issues/questions. ~kle

Dear Board,

Patent Owner respectfully requests a call with the Board to discuss its request for leave to file a motion for limited additional discovery solely for the purpose of allowing Patent Owner to use ~~what Petitioner has represented is third-party-owned~~ source code in the course of these IPR proceedings. Petitioner represents that this source code is owned by multiple third parties. Patent Owner has conferred with Petitioner, which opposes this request, and the Parties are available at the following dates and times (in Eastern), if the Board believes a call is necessary:

Monday, October 14: 1pm to 5pm ET

Tuesday, October 15: 9am to 5pm ET I'm available 9:30am-11am and noon-2pm ET

Wednesday, October 16: 9:30am to 5pm ET

Regards,  
Liz Patton

**Kyle Elliott** Attorney at Law  
Spencer Fane LLP

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**From:** Patton, Elizabeth A. <[epatton@foxrothschild.com](mailto:epatton@foxrothschild.com)>  
**Sent:** Monday, October 14, 2019 9:22 AM  
**To:** Elliott, Kyle L. <[KElliott@spencerfane.com](mailto:KElliott@spencerfane.com)>; Tuttle, Kevin <[ktuttle@spencerfane.com](mailto:ktuttle@spencerfane.com)>; Bear, Brian <[bbear@spencerfane.com](mailto:bbear@spencerfane.com)>; Hare, Jaspal <[jhare@spencerfane.com](mailto:jhare@spencerfane.com)>  
**Cc:** L Toft <[ltoft@foxrothschild.com](mailto:ltoft@foxrothschild.com)>; A Nath <[anath@foxrothschild.com](mailto:anath@foxrothschild.com)>; Allee, J. Lori <[JAllee@spencerfane.com](mailto:JAllee@spencerfane.com)>; Curti, Jennifer L. <[jcurti@foxrothschild.com](mailto:jcurti@foxrothschild.com)>  
**Subject:** RE: IPR2019-514, -500, and -497 (ANM v. Sleep Number)

Kyle,

I can confirm we will not intentionally mine for/review metadata as described below. Attached are instructions for using our secure file transfer site. Shortly you'll be receiving a link to upload documents from our paralegal, Jen Curti. Please zip the files before you load them.

Lastly, please respond as soon as possible to my draft email to the Board that I sent on Friday at 12:40pm (reflected below). As you know, this is a time sensitive matter.

Liz

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**From:** Elliott, Kyle L. <[KElliott@spencerfane.com](mailto:KElliott@spencerfane.com)>  
**Sent:** Monday, October 14, 2019 8:37 AM

**To:** Patton, Elizabeth A. <[epatton@foxrothschild.com](mailto:epatton@foxrothschild.com)>; Tuttle, Kevin <[ktuttle@spencerfane.com](mailto:ktuttle@spencerfane.com)>; Bear, Brian <[bbear@spencerfane.com](mailto:bbear@spencerfane.com)>; Hare, Jaspal <[jhare@spencerfane.com](mailto:jhare@spencerfane.com)>  
**Cc:** Toft, Lukas <[ltoft@foxrothschild.com](mailto:ltoft@foxrothschild.com)>; Nath, Archana <[anath@foxrothschild.com](mailto:anath@foxrothschild.com)>; Allee, J. Lori <[JAllee@spencerfane.com](mailto:JAllee@spencerfane.com)>  
**Subject:** [EXT] RE: IPR2019-514, -500, and -497 (ANM v. Sleep Number)

Good Morning Liz:

We have been working on and reviewing the production data over the weekend, and I will respond to your e-mail below in full later today. Regarding the production, the volume of data is quite large. Thus, we will need to produce this in native format; it is not feasible to pdf the spreadsheets. We will attempt to pull out metadata, but we also need your assurances that you will not mine the document for metadata.

Because these are spreadsheets, we should reach a consensus on what is metadata. To that end, normal non-visible, operational items, such as pivot tables and formulas, etc. would **not** be considered metadata. Creation dates, revisions, operators, and other non-operational items would be considered metadata. Please let me know if this is an agreement we can reach.

Also, we will be providing two spreadsheets totaling over 50MBs, so please let me know if it is possible for you to set up a portal for us to load the files.

Regards,  
Kyle

**Kyle Elliott** Attorney at Law  
Spencer Fane LLP

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**From:** Patton, Elizabeth A. <[epatton@foxrothschild.com](mailto:epatton@foxrothschild.com)>  
**Sent:** Saturday, October 12, 2019 3:52 PM  
**To:** Elliott, Kyle L. <[KElliott@spencerfane.com](mailto:KElliott@spencerfane.com)>; Tuttle, Kevin <[ktuttle@spencerfane.com](mailto:ktuttle@spencerfane.com)>; Bear, Brian <[bbear@spencerfane.com](mailto:bbear@spencerfane.com)>; Hare, Jaspal <[jhare@spencerfane.com](mailto:jhare@spencerfane.com)>  
**Cc:** L Toft <[ltoft@foxrothschild.com](mailto:ltoft@foxrothschild.com)>; A Nath <[anath@foxrothschild.com](mailto:anath@foxrothschild.com)>; Allee, J. Lori <[JAllee@spencerfane.com](mailto:JAllee@spencerfane.com)>  
**Subject:** RE: IPR2019-514, -500, and -497 (ANM v. Sleep Number)

Kyle,

I revised the PO to reflect Providence instead of Arco as owning the Versions 1.8, 1.97, and 2.0 source code and exempting the Platinum code from needing to be redacted. I also prepared a Stipulation seeking entry of a PO, with indication that the draft PO and a redline against the Default PO will be attached (as we understand is required). Please

send any additional comments by Monday morning at 11am CT so that this can be filed prior to Petitioner's production, which we've agreed will be completed by COB.

Regarding your proposal to allow use of only the Platinum code, while we appreciate your offer of this limited compromise, we believe it is still insufficient. Patent Owner's request to use all third party code should not be disputed because we have agreed to the same PO provisions that is keeping the source code confidential in the underlying district court cases. As indicated earlier, we will be asking the Board to allow use of all of the third party source code. If Petitioner will not agree, please provide any insertions or revisions to my draft email to the Board by Monday morning at 9am CT.

Lastly, I disagree that Patent Owner will be required to expunge Petitioner or Sizewise's confidential information in the event the Board denies the motion to seal or will not enter the modified PO. As you know, the Default PO language (which our Stipulated PO reflects at paragraph 10(i)) states that a submission is treated confidential and remains under seal "unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to qualify for confidential treatment." In other words, the Board has the power to determine whether something you've designated is truly confidential and should remain under seal.

I understand your position that data requested by Patent Owner's discovery requests in IPR2019-00514 does not exist prior to 2004. Patent Owner reserves all rights on this issue.

Liz

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**From:** Elliott, Kyle L. <[KElliott@spencerfane.com](mailto:KElliott@spencerfane.com)>

**Sent:** Friday, October 11, 2019 4:19 PM

**To:** Patton, Elizabeth A. <[epatton@foxrothschild.com](mailto:epatton@foxrothschild.com)>; Tuttle, Kevin <[ktuttle@spencerfane.com](mailto:ktuttle@spencerfane.com)>; Bear, Brian <[bbear@spencerfane.com](mailto:bbear@spencerfane.com)>; Hare, Jaspal <[jhare@spencerfane.com](mailto:jhare@spencerfane.com)>

**Cc:** Toft, Lukas <[ltoft@foxrothschild.com](mailto:ltoft@foxrothschild.com)>; Nath, Archana <[anath@foxrothschild.com](mailto:anath@foxrothschild.com)>; Allee, J. Lori <[JAllee@spencerfane.com](mailto:JAllee@spencerfane.com)>

**Subject:** [EXT] RE: IPR2019-514, -500, and -497 (ANM v. Sleep Number)

Liz,

I have reviewed the PO revisions, and I have no objections to the revisions with the exception that we need to change ARCO to Providence. Regarding what we are referring to as the Platinum Code (as opposed to the Medisphere Code), we have confirmed that ownership/copyright to that code still resides with third party vendor Elsyn under 17 USC 204. However, according to "Platinum Upgrade Project" proposals provided by Elsyn, it is the intent of the parties (Elsyn and Sizewise) that the copyright/ownership would be assigned. Thus, that assignment, when executed, would be to Sizewise, which has not been ordered to produce anything by the Board. However, to resolve this

overall dispute regarding the use of source code without bothering the Board or District Court, we would be willing to permit the use of Platinum Code lines and variables as set forth in your infringement contentions if you agree to redact all Medishpere and Providence code.

The redaction of the Medisphere and Providence code is consistent with Judge Pym's order, which referenced redaction of third party software generally (not Medisphere specifically). The fact that this source code needs to be redacted should come as no surprise to SN. First, SN, and not American National, proposed the redaction of third party software as a means of satisfying the constitutional issues of notice and right to be heard raised in the briefing before the District Court. In fact, we still think it is prejudicial to American National. Second, we disclosed with particularity to SN that the source code at issue was almost entirely from third parties, and this was disclosed to SN months prior to the stay being enacted -- the document we have been referencing ANMI133414-133422 was created and produced in response to the interrogatories that SN served in the district court, and that document clearly shows the consumer source code was from ARCO and Providence, not ANM or Sizewise.

Looking to housekeeping issues, the Platinum code and any other source code ultimately used, and any confidential information in Patent Owner's filing, must be submitted with a motion to seal. If the motion to seal is not granted, or if the Board does not enter a protective order in these IPRs as agreed by the parties, Patent Owner must immediately file a motion to expunge the confidential information of Petitioner in Patent Owner's filings from the record prior to the information becoming public.

Shifting to the production dates issue. American National data being produced goes back to 2004 with some prior data provided in a document produced in the acquisition of Nautilus. Other data prior to this, is in a retired Peachtree 2000 ERP accounting system, and prior, multiple attempts to access this data have failed.

Please let me know if there are any further unresolved issues for the day.

Regards,  
Kyle

**Kyle Elliott** Attorney at Law  
Spencer Fane LLP

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**From:** Patton, Elizabeth A. <[epatton@foxrothschild.com](mailto:epatton@foxrothschild.com)>

**Sent:** Friday, October 11, 2019 12:40 PM

**To:** Elliott, Kyle L. <[KElliott@spencerfane.com](mailto:KElliott@spencerfane.com)>; Tuttle, Kevin <[ktuttle@spencerfane.com](mailto:ktuttle@spencerfane.com)>; Bear, Brian <[bbear@spencerfane.com](mailto:bbear@spencerfane.com)>; Hare, Jaspal <[jhare@spencerfane.com](mailto:jhare@spencerfane.com)>

**Cc:** L Toft <[ltoft@foxrothschild.com](mailto:ltoft@foxrothschild.com)>; A Nath <[anath@foxrothschild.com](mailto:anath@foxrothschild.com)>; Allee, J. Lori <[JAllee@spencerfane.com](mailto:JAllee@spencerfane.com)>

**Subject:** RE: IPR2019-514, -500, and -497 (ANM v. Sleep Number)

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