UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN NATIONAL MANUFACTURING INC.,
Petitioner,

v.

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

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Case No. IPR2019-00500
Patent No. 9,737,154 B2

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**PATENT OWNER'S OBJECTIONS TO PETITIONER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64 and the Federal Rules of Evidence, as applied by the Board, Patent Owner Sleep Number Corporation ("Sleep Number") provides the following objections to evidence submitted by Petitioner American National Manufacturing Inc. ("ANM"). These objections are timely served within five (5) business days.

Sleep Number serves ANM with these objections to provide notice that Sleep Number may move to exclude the challenged evidence under 37 C.F.R. § 42.64(c) unless ANM cures the defects associated with the challenged evidence identified below. In addition, Sleep Number reserves the right to present further objections to this or additional evidence submitted by ANM, as allowed by the applicable rules or other authority.

Exhibit 1046 – (Declaration of Dr. Joshua Phinney, Ph.D., P.E., in Support of Petitioner's Opposition to Patent Owner's Motion to Amend)

Sleep Number objects to Exhibit 1046 under Fed. R. Evid. 701-702 because Dr. Phinney does not have the requisite experience to opine on these issues. Specifically, ANM's expert, Dr. Joshua Phinney, does not satisfy either parties' definition of a POSITA because he does not have at least a year of relevant experience in pneumatics or the equivalent. (Ex. 2026 at ¶¶ 11-16, 91-92; *see also* Ex. 2041 at 6:10-14:4, 23:2-13, 74:9-75:6.)

Sleep Number objects to Exhibit 1046 to the extent the testimony provided by Dr. Phinney is not cited to or relied upon by the Opposition to Patent Owner's Motion to Amend ("Opposition") (Paper 68). For example, paragraphs 1-68, 259-284, and 441-442 of Dr. Phinney's declaration (Ex. 1046) are not cited to or relied upon in the Opposition. Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403. In addition, to the extent the Opposition does include citations to Exhibit 1046, it does not provide paragraph citations. Rather, the Opposition only cites broadly to entire sections comprised of dozens to hundreds of paragraphs. (*See* Paper 68 at pp. 8, 11, 15-19, and 21-22.) Accordingly, this testimony is irrelevant, misleading, confusing, and unduly prejudicial under Fed. R. Evid. 401-403. Moreover, several paragraphs of Dr. Phinney's declaration contain uncited references to other opinions purportedly made by Dr. Phinney, (*see*, *e.g.*, Ex. 1046 at ¶ 112), thereby further demonstrating that such testimony is misleading, confusing, and unduly prejudicial under Fed. R. Evid. 401-403.

Sleep Number further objects to Exhibit 1046 as irrelevant, misleading, and prejudicial under Fed. R. Evid. 401-403 because it includes discussion and analysis of issues not related to this proceeding. For example, at least paragraphs 44-258 relate to the '747 Patent and proposed substitute claims at issue in IPR2019-00497, but which are not at issue in this proceeding. Indeed, the overarching titles to the

sections containing these paragraphs are entitled "The Proposed Substitute Claims of the '747 Patent" and "The Proposed Substitute Claims of the '747 Patent Are Unpatentable Over the Prior Art." (*See* Ex. 1046 at pp. 17 and 26.)

Sleep Number further objects to Exhibit 1046 as lacking authentication as required under Fed. R. Evid. 901-902. Rule 901 requires that the "proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." ANM has failed to provide any evidentiary foundation for portions of this document. For example, neither ANM nor its declarant, Dr. Phinney, identifies the source of certain images contained in Exhibit 1046 or attempts to authenticate them. (*See*, *e.g*., Ex. 1046 at pp. 44, 65, 175, 195.) Likewise, neither ANM nor Dr. Phinney identifies or provides the source of annotated images in Exhibit 1046. (*See id*. at pp. 29-31, 40, 42-44, 49-50, 57, 59-61, 68, 70, 102, 112, 114-115, 135, 137-139, 144, 146, 155, 157-158, and 161.) Accordingly, this testimony is misleading and confusing under Fed. R. Evid. 401-403.

Sleep Number further objects to Exhibit 1046 as including "[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based" in violation of 37 C.F.R. § 42.55(a) and Fed. R. Evid. 702-703 and 705. For example, in paragraph 76, Dr. Phinney testifies that (1) "differing pressures on either end of an air hose is typical of many pneumatic control systems," (2) "a conduit or hose is

typically interposed between a pressure sensor and air chamber in other fluid control applications" and (3) "these applications present a particular challenge to the control engineer since the point of pressure sensing is separated from the pressurized volume by a pneumatic impedance" but fails to provide any underlying facts or data to support how the identified references disclose or support these opinions or why a POSITA would be aware of these challenges. (*See* Ex. 1046 at ¶¶ 76.) In another example, Dr. Phinney testifies that a POSITA "would recognize that most steps in a pressure-adjustment sequence… require very little time, or can be performed within a known amount of time" but that the step of adjusting pressure in an air bladder depends on pressurization characteristics that may be unknown at the start of adjustment" but fails to provide any underlying facts or data to support such an opinion. (*See* Ex. 1046 at ¶ 176.)

In other cases, Dr. Phinney's cited support does not support the argument or opinion expressed. For example, Dr. Phinney states a POSITA would "understand that the target pressure would be calculated using a positive offset when inflation is commanded" and cites to Gifft, which does not disclose the use of offsets or the calculation of a target pressure. (*See id.* at ¶ 124.) In another example, Dr. Phinney states a POSITA referring to Pillsbury "would have found it obvious to establish an initial, non-zero estimate of offset values… [and] recognized that such a choice of

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