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.

_____

Case No. IPR2019-00500

Patent No. 9,737,154

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PETITIONER'S SURREPLY TO PATENT OWNER'S MOTION TO AMEND (PAPER 42)

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Petitioner American National Manufacturing, Inc. ("ANM" or "Petitioner") files this Surreply in support of its Opposition (Paper 68) to Patent Owner Sleep Number Corp.'s (f/k/a Select Comfort Corp.) ("PO" or "Sleep Number") Motion to Amend (Paper 42) (the "MTA") and in response to PO's Reply (Paper 81) (the "Reply"). The appendix to the MTA provides a redline of proposed "Substitute Claim(s)" (or the "Proposed Amendment(s)").

I. INTRODUCTION

This Board correctly found all the Substitute Claims to be unpatentable over prior art. *See* Prel. Guidance (Paper 77 at 6–11). The Board's guidance recognized that the Proposed Amendments add nothing more than non-distinguishing, generic limitations within the ambit of prior art and do nothing to add to patentability.

The Reply does nothing to rebut the Board's careful analysis, much less Petitioner's analysis. Instead providing cogent analysis, the MTA's rebuttal arguments are not tied to claim language (or even a specific construction), misrepresent Petitioner's positions and expert testimony to complexify and make strawman arguments, or are otherwise specious.

Moreover, PO for the first time admits that the specification contains an error in a critical equation. This renders the claims inoperative and un-enabled, among other things.

Accordingly, the Board should deny the MTA.

II. ARGUMENT[1]

A. The Proposed Amendments Fail To Meet The Statutory And Regulatory Requirements

1. PO has not demonstrated support for the Proposed Amendments

PO's rebuttal is a meager one sentence asserting that Dr. Messner now has provide detailed support. Reply at 1–2. However, Dr. Messner himself admitted that his declaration merely parrots back claim language under the heading "My analysis." *E.g.*, Ex. 1062 at 78:1–10. He also admitted that he merely provides a bare list of citations (without analysis) under the heading "Support in Ex. . . .". *E.g.*, Ex. 1062 at 86:6–15. He also admitted that the vast majority of those citations are

[1] In § II.B of the Reply, PO argues that Petitioner improperly incorporates by references because the Opposition cites to more robust discussion provided in Dr. Phinney's declaration. As an initial matter, PO's argument seems disingenuous given that PO itself effectively by citation incorporates by reference 28 pages of declaration testimony. *See* Reply at 1–2 ("written description . . . is now further bolstered by Dr. Messner's detailed mapping of the substitute claims to the original disclosure. (Exhibit 2079 ¶¶ 11-20.)"). In stark contrast to the PO (*see* § II.A.1 *infra* discuss PO's practice of merely providing string citations), the Opposition provides plain-English discussion in a level of detail demanded by this Board's imposed page limits. That discussion is supported by citation to evidence providing a more detail discussion. Petitioner's plain-English briefing is proper unlike PO's string-citation briefing.

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