

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 B2

PATENT OWNER'S MOTION TO EXCLUDE PETITIONER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(c)

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INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), and the Scheduling Orders (Papers 12, 84), Patent Owner Sleep Number Corporation (“PO”) moves to exclude Petitioner American National Manufacturing Inc.’s (“ANM”) Exhibits 1009, 1028-1034, 1036, 1046, 1051-1052, 1056-1057, 1059-1061 (“the Exhibits”), which are inadmissible under the Federal Rules of Evidence (“FRE”) as set forth in PO’s objections to the Exhibits (“Objections”). (*See* Papers 13, 27, 52, 69, 72.) Therefore, PO respectfully requests the Board exclude the Exhibits.

ARGUMENT

A motion to exclude must explain why evidence is admissible under the FRE (*e.g.*, relevance or hearsay). *Legend3D, Inc. v. Prime Focus Creative Servs. Can. Inc.*, IPR2016-00806, Paper 73 at 8-9 (PTAB Sept. 18, 2017); *see* 37 C.F.R. §§ 42.62, 42.64; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,758, 48,767 (Aug. 14, 2012) (noting parties may submit motions to exclude regarding evidence “believed to be inadmissible”).

I. DR. JOSHUA PHINNEY’S TESTIMONY SHOULD BE EXCLUDED.

A. Phinney’s Testimony Should Be Excluded Because He Does Not Qualify as a POSITA.

All of Phinney’s testimony should be excluded because he does not qualify as a POSITA under the parties’ agreed upon definition. ANM and Phinney state that a POSITA for the ‘154 Patent would have at least a B.S. in engineering and “at least

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