

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

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**PETITIONER'S MOTION TO EXCLUDE EVIDENCE**

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## **I. INTRODUCTION AND STATEMENT OF RELIEF**

Pursuant to the Board's rules, Petitioner American National Manufacturing Inc. ("ANM") moves to exclude the following exhibits submitted by Patent Owner ("PO") in support of its Patent Owner Response (Papers 45-46; "POR") and Patent Owner Surreply (Paper 85; "POS"): Ex. 2027, 2029, 2030, 2033, 2034, 2035, 2036, 2044, 2045, 2046, 2047, 2048, 2049, and 2050 under the Federal Rules of Evidence ("FRE") for the reasons set forth below.

## **II. Exhibit 2027 – Declaration of John Abraham**

PO relies on the declaration of John Abraham to assert nexus for secondary indicia of nonobviousness, namely, commercial success and copying. POR at 59-60, 63-67; POS at 22-24. ANM duly objected to the admission of his declaration under FRE 702 and 37 C.F.R. § 42.65(a), as Abraham failed to adequately disclose the basis for his opinions and due to the unreliability of his methods. Petitioner's *Objections to Patent Owner's Evidence*, Paper 51 ("OBE") at 5-9. Thus, the evidence should be excluded.

### **A. Legal Standard for Admissibility of Expert Opinions**

FRE 702 permits expert witness testimony if: "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d)

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