

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 IPR2019-00497 (Patent 8,769,747 B2)
Case IPR2019-00500 (Patent 9,737,154 B2)
Case IPR2019-00514 (Patent 5,904,172)

Before SCOTT A. DANIELS, FRANCES L. IPPOLITO, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Oral Argument
37 C.F.R. § 42.5

IPR2019-00497 (Patent 8,769,747 B2)
IPR2019-00500 (Patent 9,737,154 B2)
IPR2019-00514 (Patent 5,904,172)

The parties requested oral argument pursuant to 37 C.F.R. § 42.70. *See* Papers 90, 91.¹ For this combined hearing including IPR2019-00497, IPR2019-00500, and IPR2019-00514, Petitioner requested 120 minutes of time to present its case, and Patent Owner requested 150 minutes of total time. Paper 90, 3; Paper 91, 1. We grant each party 120 minutes of total time, in the following manner. Each party will present its arguments for IPR2019-00497 and IPR219-00500 together, and separately present its argument for IPR2019-00514. We will first hear both parties' arguments for IPR2019-00497 and IPR219-00500, and thereafter hear the arguments for IPR2019-00514. Each party may decide how to allocate its allotted 120 minutes between its combined argument for IPR2019-00497 and IPR219-00500, and its argument for IPR2019-00514.

Our Revised Scheduling Order set the date of oral argument, if requested, as May 20, 2020. Paper 84 (Scheduling Order). The statutory deadline for issuing a final written decision in this proceeding is July 24, 2020.

On March 15, 2020, the USPTO announced:

Out of an abundance of caution for the health and safety of the public and USPTO employees, all USPTO offices will be closed to the public beginning Monday, March 16, 2020 until further notice. USPTO offices will remain open for employees, contractors, and those with access badges. Unless otherwise notified, USPTO operations will continue without interruption. Patent and trademark application deadlines and other deadlines are not extended.

¹ The parties filed similar papers in the three above-captioned proceedings. For purposes of this Order, we refer to the paper numbers in IPR2019-00497.

IPR2019-00497 (Patent 8,769,747 B2)
IPR2019-00500 (Patent 9,737,154 B2)
IPR2019-00514 (Patent 5,904,172)

See <https://www.uspto.gov/about-us/news-updates/uspto-offices-closed-public>. Therefore, as discussed in detail below, oral argument in this proceeding will occur by video.

Oral Argument

Oral arguments will commence at 1:00 p.m. (ET) on Wednesday, May 20, 2020, by video. The parties are directed to contact the Board at least 10 days in advance of the hearing if there are any concerns about disclosing confidential information.

At oral argument the parties will address first the claims challenged in IPR2019-00497 and IPR2019-00500. Petitioner will argue first, and may present arguments regarding the challenged claims. Patent Owner will then have the opportunity to respond to Petitioner's arguments and address any issues with respect to the Motions to Amend in these cases. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's rebuttal arguments.

The parties will then address the claims challenged in IPR2019-00514 in the same manner, Petitioner will argue first and may present arguments regarding the challenged claims. Patent Owner will then have the opportunity to respond to Petitioner's arguments. Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Finally, Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's rebuttal arguments.

No other arguments will be heard.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

IPR2019-00497 (Patent 8,769,747 B2)
IPR2019-00500 (Patent 9,737,154 B2)
IPR2019-00514 (Patent 5,904,172)

If at any time during the proceeding, you encounter technical or other difficulties that fundamentally undermine your ability to adequately represent your client, please let the panel know immediately, and adjustments will be made.²

To facilitate planning, each party must contact PTAB Hearings at (571) 272-9797 five (5) business days prior to the oral hearing date to receive video set-up information. As a reminder, all arrangements and the expenses involved with appearing by video, such as the selection of the facility to be used from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

If one or both parties would prefer to participate in the oral hearing telephonically, they should notify PTAB Hearings at the above telephone number five (5) business days prior to the hearing to receive dial-in connection information.

Demonstratives

Demonstratives are not required. Demonstratives, if used, are aids in support of oral argument; they are not evidence or exhibits in the review. They will not become part of the official record of this review other than via the transcript of oral argument. Only demonstratives that are specifically discussed by counsel will be considered as part of the argument.

² For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

IPR2019-00497 (Patent 8,769,747 B2)
IPR2019-00500 (Patent 9,737,154 B2)
IPR2019-00514 (Patent 5,904,172)

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served at least (7) seven business days before the hearing. Thus, the parties shall serve on opposing counsel demonstrative exhibits no later than Noon Eastern Time, Monday, May 11, 2020. Copies should also be sent at the same time by email (not filed via electronic filing) to the Board at PTABHearings@uspto.gov.

The pages of each demonstrative should be numbered. Demonstratives should be clearly marked as such. For example, each slide of a demonstrative may be marked with the words “DEMONSTRATIVE – NOT EVIDENCE” in the footer. Demonstratives cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [the petitioner’s] untimely argument . . . raised for the first time during oral argument”). To ensure compliance with this requirement, each demonstrative should, if reasonably feasible, also include citations to the record for each argument or evidence included in a demonstrative.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If any objections cannot be resolved, the unresolved objections must be filed with the Board at least (2) two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives and portions thereof are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.