

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

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

---

**PETITIONER'S OPPOSITION TO PATENT OWNER'S  
MOTION TO EXCLUDE (PAPER 93)**

**TABLE OF CONTENTS**

**I. INTRODUCTION** ..... 1

**II. LEGAL STANDARD** ..... 1

**III. ARGUMENT** ..... 1

**A. Dr. Phinney’s Testimony should not be excluded**..... 1

        1. Dr. Phinney is a duly qualified expert and POSA ..... 1

        2. Dr. Phinney’s testimony is duly supported ..... 3

        3. Dr. Phinney’s fluid-circuit diagram is admissible ..... 4

**B. Supporting exhibits re ANM’s opposition to PO motion for additional discovery should not be excluded**..... 5

        1. Exs. 1028–29 and 1033 are not inadmissible hearsay ..... 5

        2. Exs. 1028–34 and 1036 are also admissible ..... 6

**C. Miscellaneous arguments should be disregarded** ..... 7

        1. The Declaration of Mr. Craig Miller should not be excluded..... 7

        2. The Declaration of Dr. Lynde should not be excluded.....11

        3. Deposition Transcripts .....13

**IV. CONCLUSION**.....14

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>Donlin v. Phillips Lighting N. Am. Corp.</i> , 581 F.3d 73 (3rd Cir. 2009).....	9
<i>Intelligent Bio-Systems, Inc. v. Illumia Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016).....	11
<i>LifeWise Master Funding v. Telebank</i> , 374 F.3d 917 (10th Cir. 2004).....	9
<i>Plexxikon Inc. v. Novartis Pharm. Corp.</i> , No. 17-cv-04405-HSG, 2020 WL 1455830 (N.D. Cal. Mar. 25, 2020) .....	2
<i>Sanofi-Aventis U.S. LLC v. Immunex Corp.</i> , No. IPR2017-01884, Paper 96 (PTAB Feb. 14, 2019) .....	1
<i>Ward v. Dixie Nat. Life Ins. Co.</i> , 595 F.3d 164 (4th Cir. 2010).....	11

## **I. INTRODUCTION**

Petitioner American National Manufacturing, Inc. (“ANM” or “Petitioner”) files this Opposition in response Patent Owner Sleep Number Corp.’s (f/k/a Select Comfort Corp.) (“PO” or “Sleep Number”) Motion to Exclude (Paper 93) (the “MTE”).

PO’s motion should be denied.

## **II. LEGAL STANDARD**

“The party moving to exclude evidence bears the burden of proving that it is entitled to the relief requested—namely, that the material sought to be excluded is inadmissible under the Federal Rules of Evidence (“FRE”).” *Sanofi-Aventis U.S. LLC v. Immunex Corp.*, No. IPR2017-01884, Paper 96 (PTAB Feb. 14, 2019) (citing 37 C.F.R. §§ 42.20(c) and 42.62(a)).

## **III. ARGUMENT**

### **A. Dr. Phinney’s Testimony should not be excluded**

#### **1. Dr. Phinney is a duly qualified expert and POSA**

In 2005, Dr. Phinney earned a Ph.D. in Electrical Engineering from the Massachusetts Institute of Technology (“MIT”), among other degrees. Ex. 1009, ¶

5. While at MIT, he worked for the Laser Interferometric Gravitation Wave

Case No. IPR2019-00500

Patent No. 9,737,154

Observatory (LIGO) experiment, where he designed and tested hydraulic systems for an experimental apparatus for out-stage seismic isolation. *Id.* Since 2005, he has worked for Exponent, where he continued to perform engineering duties, including related to control systems. *Id.*, ¶¶ 6–14; *see also* Ex. 1010. He has the educational qualifications and “equivalent” work experience that qualifies him as an expert under FRE 702 as well as a person of ordinary skill in the art (“POSA”). *See, generally, Plexxikon Inc. v. Novartis Pharm. Corp.*, No. 17-cv-04405-HSG, 2020 WL 1455830 (N.D. Cal. Mar. 25, 2020) (discussing cases and concluding expert is qualified).

It is unclear how PO can credibly challenge Dr. Phinney’s credentials when PO’s lead expert, Dr. Messner, also lacks *per se* air mattress experience. *See* Ex. 1062 at 10:17–11:13 (Dr. Messner testifying he has no air-mattress work experience but that he believes he is qualified to testify here based on his engineering work in analogous fields of “controls, extensive background in mechanical engineering, in design, in automatic control systems, all of which are relevant to this case.”); *see also* Ex. 1052 at 189:9–190:5 (similar). Moreover, Dr. Phinney has testified cogently throughout this proceeding and demonstrated his competence. *See, e.g.*, Ex. 2041 at 2:2–25 (for example, Dr. Phinney accurately conducted conversions of pressure units without calculator or aid of scratch paper). In contrast, PO’s experts have waffled throughout and demonstrate competence. *See, e.g.*, Ex. 1054 at 32:10-

# 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.