

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 OBJECTIONS TO PETITIONER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)

Pursuant to 37 C.F.R. § 42.64 and the Federal Rules of Evidence, as applied by the Board, Patent Owner Sleep Number Corporation (“Sleep Number”) provides the following objections to evidence submitted by Petitioner American National Manufacturing Inc. (“ANM”). These objections are timely served within ten (10) business days.

Sleep Number serves ANM with these objections to provide notice that Sleep Number may move to exclude the challenged evidence under 37 C.F.R. § 42.64(c) unless ANM cures the defects associated with the challenged evidence identified below. In addition, Sleep Number reserves the right to present further objections to this or additional evidence submitted by ANM, as allowed by the applicable rules or other authority.

Exhibit 1009 – Declaration of Dr. Joshua Phinney

Sleep Number objects to Exhibit 1009 as lacking authentication as required under FED. R. EVID. 901, which requires that “the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” ANM has failed to provide any evidentiary foundation for portions of this document. For example, neither ANM nor its declarant, Dr. Phinney, identifies the source of certain images contained in this document or attempts to authenticate them. *See, e.g.*, Ex. 1009 at pp. 23, 101. Dr. Phinney fails to provide a citation to any source for these images or the discussions related thereto. *See id.*; *see also id.* at ¶¶ 47-49, 242, 249. Accordingly, this testimony is irrelevant, misleading, unduly prejudicial, and confusing under FED. R. EVID. 401-403.

Sleep Number further objects to Exhibit 1009 as including “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based” in violation of 37 C.F.R. § 42.55(a) and FED. R. EVID. 702-703 and 705. For example, Dr. Phinney testifies that a POSA would have been aware (1) “of the differences between measured pressure and chamber pressure in the system disclosed by Giff” and (2) “that a pressure sensor collocated with the pump measures too high pressure during filling and a too low pressure during emptying” but fails to provide any underlying facts or data to support such opinions. *See* Ex. 1009 at ¶¶ 104, 245. In another example, Dr. Phinney testifies that “the actual chamber pressure can only be measured after dwelling in an idle state, i.e., after the sensor pressure has come to equilibrium with the pressure in the chamber” and similarly fails to provide any underlying facts or data to support such an opinion. *See* Ex. 1009 at ¶¶ 103, 242. Sleep Number further objects to other portions of Exhibit 1009 to the extent it does not disclose the underlying facts or data on which statements and/or the opinion is based. *See* Ex. 1009 at ¶¶ 42-50, 52-55, 63-69, 82, 89, 95, 99-100, 103-106, 112, 241-245, and 249. Because many statements and opinions in Exhibit 1009 are unsupported and conclusory, Sleep Number further objects to this testimony as irrelevant, misleading, unduly prejudicial, and confusing under FED. R. EVID. 401-403.

Sleep Number objects to Exhibit 1009 to the extent it references unspecified other arguments to support a position. *See* Exhibit 1009 at ¶¶ 107, 112. Accordingly, this testimony is misleading and confusing under FED. R. EVID. 401-403.

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Dated: August 7, 2019

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned hereby certifies that on August 7, 2019, the foregoing Patent Owner's Objections to Petitioner's Evidence Pursuant to 37 C.F.R. § 42.64(b)(1) was served via e-mail, as authorized by the Petitioner, at the following email correspondence address of record as follows:

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