

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 REQUEST FOR REHEARING
OF FINAL WRITTEN DECISION UNDER 37 C.F.R. § 42.71(d)**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. LEGAL STANDARD	2
III. ARGUMENT	3
A. PTAB is not Authorized to make express or implied Statements about Contested Infringement Matters	3
B. The Written Passage is without Support in the Record.....	6
C. The Board’s Statement Also Ignores its own Rules Regarding Incorporation by Reference	7
D. To the Extent the Board’s Decision is a Statement on Infringement, it is in Violation of Petitioner’s Constitutional Rights.....	9
IV. CONCLUSION	10

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Arthrex, Inc. v. Smith & Nephew, Inc.</i> , 880 F.3d 1345 (Fed. Cir. 2018)	3
<i>Seadrill Amer. Inc. v. Transocean Offshore Deepwater Drilling, Inc.</i> , IPR2015-01929, Paper 31	3
<i>Star Fruits S.N.C. v. U.S.</i> , 393 F.3d 1277 (Fed. Cir. 2005)	2
Federal Statutes	
5 U.S.C. § 706	3, 5, 9
35 U.S.C. § 311	1, 3
Regulations	
37 C.F.R. § 42.71(c)	2
37 C.F.R. § 42.71(d)	2
37 C.F.R. § 42.6(a)(3)	7, 8
Constitutional Provisions	
U.S. Const. Amendment VII	9
Other Authorities	
U.S. Patent No. 8,769,747 B2	1, 5, 9

I. INTRODUCTION

On July 23, 2020, the Patent and Trademark Board (“PTAB” or “the Board”) handed-down its final written decision in the above captioned matter finding various claims of U.S. Patent No. 9,737,154 B2 (the “154 Patent”) unpatentable, patentable, and patentable as amended. On page 92 of the Final Written Decision (“FWD”) the Board writes:

ANM does not refute the testimonies of Dr. Abraham and Dr. Edwards that these versions of the source code fall within the claims of ‘154 patent such that ANM’s products using these versions infringe the claims (Ex. 2027 ¶ 29; Ex. 2029 ¶ 41)

In this passage, which in fairness may be dicta, the Board appears to make a statement about patent infringement, a matter outside the Board’s statutory jurisdiction under 35 U.S.C. §311. Beyond the issue of statutory authority, the statement is not in accord with either the facts presented in the record or the posture and conduct of this proceeding. It is not accurate to imply that AMN did “not refute” or otherwise conceded Dr. Abraham’s and Dr. Edwards’ testimony—AMN contested the weight and admissibility of both expert opinions. Finally, there is no evidentiary basis to state that Dr. Abraham or Dr. Edward communicated any opinion about infringement in their written testimony, as both expressly disclaimed

any opinions about infringement, stating that they were only speaking to copying and nexus.

The Board should modify the opinion to either strike this sentence or modify it so that it does not prejudice Petitioner's statutory and constitutional rights to have any issue of infringement heard before a jury in the United States district court.¹ In the alternative, the Board should grant rehearing for Petitioner to fully present its positions on non-infringement.

II. LEGAL STANDARD

The rule that governs the legal standard for a request for rehearing is 37 C.F.R. § 42.71(d), which provides that “[t]he burden of showing a decision should be modified lies with the party challenging the decision.” The Board evaluates a request for rehearing under an abuse of discretion standard. 37 C.F.R. § 42.71(c). The Federal Circuit has made clear that:

“[a]n abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.”

Star Fruits S.N.C. v. U.S., 393 F.3d 1277, 1281 (Fed. Cir. 2005).

¹ By enumerating these issues for rehearing, Petitioner does not concede or waive any ground that it may have for appeal beyond that outlined in this request for rehearing.

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.