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Paper 113
Entered: September 30, 2020

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.

IPR2019-00497 (Patent 8,769,747 B2)
IPR2019-00500 (Patent 9,737,154 B2)
IPR2019-00514 (Patent 5,904,172)[1]

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

DANIELS, *Administrative Patent Judge*.

ORDER
Dismissing Petitioner's Motion for Additional Discovery
37 C.F.R. §§ 42.24, 42.51(b)(2)

[1] We issue one Order and enter it in each proceeding.

Following a November 22, 2019 email from American National Manufacturing Inc., ("Petitioner"), we authorized via email on December 12, 2019, Petitioner to file a Motion for Additional Discovery ("Motion," or "Mot.") and Sleep Number Corporation ("Patent Owner") to file an Opposition ("Opposition," or "Opp.") to the Motion in each of the above-captioned proceedings. Petitioner filed a Motion for Additional Discovery on December 19, 2019.[2] Paper 62. Patent Owner filed an Opposition on December 31, 2019. Paper 65. Petitioner's Motion requested additional discovery relating to Patent Owner's advertising and marketing expenditures as it relates to commercial success and Patent Owner's assertions of secondary considerations of non-obviousness. Mot. 1.

In our Final Written Decision (Paper 105, "Decision" or "Dec."), we determined that Patent Owner's evidence of commercial success was entitled to minimal probative weight. Dec. 95. And overall, we determined that Patent Owner's objective evidence of non-obviousness had little if any probative weight in support of patentability of claims 1–22. *Id.* at 104. Because we did not find Patent Owner's objective evidence of non-obviousness, e.g., commercial success evidence, outweighs the strong evidence of obviousness as to claims 1–4, 7–14, and 16–19 submitted by Petitioner, we determine that Petitioner's Motion seeking additional discovery to argue this same position does not affect our determination as to these claims. Moreover, in our Decision, we determined that Petitioner has not demonstrated by a preponderance of the evidence that any of the asserted combinations teach or suggest that the deflate pressure adjustment factor is a

[2] For brevity we refer only to papers in IPR2019-00500.

multiplicative pressure adjustment factor required in claims 5, 6, and 15. As such, Petitioner's Motion seeking Patent Owner's marketing and advertising expenditures obviousness with respect to these claims is also moot. *Id.*

It is, therefore,

ORDERED that Petitioner's motion for additional discovery is *dismissed*.

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