

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 OBJECTIONS TO PATENT OWNER'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, Petitioner American National Manufacturing Inc. (“ANM”) provides the following objections to evidence submitted by Patent Owner Sleep Number Corporation (“Sleep Number”). These objections are timely served within five (5) business days.

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

Exhibit 2026 - “Declaration of Dr. William Messner” (Under Seal, redacted version filed publicly)

Petitioner objects to Exhibit 2026 to the extent the testimony provided by Dr. Messner is not cited to or relied upon by the Response. For example, paragraphs 106-114, 116, 132-135, and 200-201 of Dr. Messner’s report are not cited to or relied upon in the Response. Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2026 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. § 42.65(a) and Fed. R. Evid. 702-703, and 705. For example, paragraphs 12, 14, 16, 27-31, 33-43, 49-51, 57, 61, 63, 65, 68-69, 74, 82, 92, 95, 98-102, 105-106, 108-113, 117, 119-120, 122, 124-126, 128-129, 132, 136-141, 143-144, 146, 149-150, 153-155, 158, 160-162, 164-166, 168-169, 173, 178-180, 194, 196, 198-199, and 203-204 of Dr. Messner’s report fail to provide underlying facts or data on which statements and/or the opinion is based, either by (1) providing no citations, (2) failing to cite where in a reference the disclosure supporting the statement and/or opinion can be found, or (3) citing to a reference that fails to provide support for the statement and/or opinion be proffered. This is also true for any analysis that cites to paragraphs identified herein as deficient. Petitioner further objects to this testimony as irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2026 to the extent it references unspecified other arguments to support a position. Accordingly, this testimony is misleading and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2026 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. § 42.65(a) and Fed. R. Evid. 702-703, and 705. For example, paragraphs 12, 14, 16, 27-28, 30-31, 33, 39-42, 49-51, 57, 61, 63, 65, 68-69, 74, 82, 91-92, 106, 108-110, 112-113, 117, 119-120, 122, 124-126, 129, 132, 136-141, 143-144, 146, 149-150, 153-155, 158, 160-162, 164-166, 168-169, 173, 178-180, and 203-204 of Dr. Messner's report fail to provide underlying facts or data on which statements and/or the opinion is based, either by (1) providing no citations, (2) failing to cite where in a reference the disclosure supporting the statement and/or opinion can be found, or (3) citing to a reference that fails to provide support for the statement and/or opinion be proffered. This is also true for any analysis that cites to paragraphs identified herein as deficient. Petitioner further objects to this testimony as irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403.

Petitioner objects to the extent Exhibit 2026 misrepresents Petitioner's positions. For example, Exhibit 2026 (e.g., paragraph 162 (discussing use of Mittal's high-pressure system)) provides opinions that are premised on incorporating portions of Mittal that Petitioner has not asserted are part of its combination. Such "strawman" opinions are irrational and are thus inadmissible as prejudicial, confusing, and a waste of time under Fed. R. Evid. 403.

Petitioner objects to the extent Exhibit 2026 improperly puts into dispute issue that Patent Owner cannot reasonably dispute. For example, Exhibit 2026 (e.g., paragraph 194 *et seq.* (discussing “substantially equal”)) provides opinions that are premised on arguing that Petitioner has not provided sufficient analysis on certain claim terms; however, those claim terms are not reasonably in dispute (e.g., because neither the patent at issue, nor the claims define with any particularity “substantially equal” and there is no dispute that all prior art references teach deflating/inflating until a certain pressure is reached). Such opinions are inadmissible as prejudicial, confusing, and a waste of time under Fed. R. Evid. 403.

Petitioner objects to the extent Exhibit 2026 misrepresents evidence. For example, Exhibit 2026 at paragraph 206 provides opinions that are based on misrepresenting the substance of an email by Craig Miller. Such opinions are unreliable and also inadmissible as prejudicial, confusing, and a waste of time under Fed. R. Evid. 403.

Exhibit 2027 – “Declaration of John Abraham”

Petitioner objects to Exhibit 2027 to the extent the testimony provided by Dr. Abraham is not cited to or relied upon by the Response. For example, paragraphs 35-37, and 42-46 of Dr. Abraham’s report are not cited to or relied upon in the

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