

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 five (5) 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 1033 – “Declaration of Craig S. Miller in Support of Petitioner’s Opposition to Patent Owner’s Motion for Additional Discovery”

Sleep Number objects to Exhibit 1033 as irrelevant, misleading, and confusing under Fed. R. Evid. 401–403. Throughout, Craig Miller misleadingly testifies as to information he either has no personal knowledge of or has not provided sufficient support for. *See, e.g.*, ¶ 3 (starting with the sentence “At the time, Sleep Number had significant product failures related to the structural integrity of the air chambers in their product lines.” and including the next five sentences); ¶ 4 (“[T]his

business has never fully recovered from the non-compete and from Sleep Number’s other anticompetitive activities.”); ¶ 6 (“At no time have I **or anyone else at American National Manufacturing** ever seen or examined *any* of Sleep Number’s source code for *any* of their air controllers.” (bold emphasis added)); ¶ 7 (“[I]t was Sleep Number who sought *our* air controllers.”); ¶ 7 (“I believe that Sleep Number accused one of these legacy controllers as infringing the ‘747 and ‘154 patents in the District Court case, despite the air controller predating both patents by several years.”); ¶ 8 (“Sleep Number was using these industry contacts I provided to steal component suppliers away from American National.”); ¶ 9 (“As was found by the jury in the District of Minnesota, our statement that our products are better quality than Sleep Number is not false—our construction techniques and designs are superior to theirs.”); ¶ 10 (“[ANM’s] construction techniques and designs are superior to [Sleep Number’s].”); ¶ 14 (testifying that Sleep Number “possesses 95% of the consumer air bed market”). The probative value of such unsupported conclusory statements is far outweighed by a danger of confusion and prejudice. Accordingly, Sleep Number objects to this Exhibit as irrelevant, misleading, and confusing under Fed. R. Evid. 401–403.

Sleep Number further objects to this Exhibit as lacking authentication as required under Fed. R. Evid. 901–902. Rule 901 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, ANM provides no authentication for an article included in a website cited in paragraph 3. Further, paragraph 15 attempts to attest to Sleep Number and ANM’s sales revenues for 2018 and 2019 respectively, without providing any authentication or method for reaching such numbers. Accordingly, this testimony is irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401–403.

Sleep Number further objects to this Exhibit to the extent testimony contained therein is more prejudicial than probative under Fed. R. Evid. 403. By way of example, at least three portions of this Exhibit fall into this category. First, the unauthenticated article included in a website cited in paragraph 3 involves an unrelated lawsuit that took place over ten years ago and that is wholly irrelevant to these proceedings. The vaguely written article provides only alleged information about Sleep Number’s mattresses and its use is highly prejudicial to Sleep Number, particularly given that the lawsuit was repeatedly dismissed and never proceeded beyond the Rule 12 stage, yet there is no mention of that fact in this Exhibit. Second, Craig Miller’s testimony in paragraph 4 regarding his unsubstantiated claims of anti-competitive behavior is irrelevant, unsupported, and speculative at best. As a result,

such self-serving and conclusory testimony is prejudicial to Sleep Number. Third, Craig Miller's proffered testimony in paragraph 10 is self-serving, speculative, misleading, and irrelevant. Indeed, Miller's testimony that Sleep Number did not adopt his designs because "it would be too expensive or add too much cost to their products" is speculative and misleading, as it falsely indicates Sleep Number at one point considered adopting ANM's designs. Likewise, Miller's testimony regarding the jury's findings in an unrelated case is misleading and irrelevant, as it falsely implies the jury found that ANM's products are superior to Sleep Number's, which it did not. Accordingly, this testimony is irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401–403, and its probative value is far outweighed by a danger of undue prejudice.

Sleep Number further objects to this Exhibit as containing inadmissible hearsay under Fed. R. Evid. 801–802. For example, proffered testimony in paragraph 4 includes purported statements of Kirk Stoa, an out of court declarant, to prove the truth of the matter asserted, *i.e.* that "in the spirit of the agreement and our commitment to working together long term" Sleep Number asked ANM to exit an unrelated agreement. As another example, proffered testimony in paragraph 3 refers to "reports of mold and mildew which formed on [Sleep Number's] air chambers" and to a Consumerist article, both of which come from out of court declarants to

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