

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

PETITIONER'S NOTICE OF APPEAL OF FINAL WRITTEN DECISION

Via PTAB E2E

Patent Trial and Appeal Board

Via Hand Carry

Office of the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314

Via CM/ECF

United States Court of Appeals for the Federal Circuit

I. INTRODUCTION

Petitioner American National Manufacturing, Inc. (“ANM”) files this notice of its appeal from the Patent Trial and Appeal Board’s (the “Board”) Final Written Decision under 35 U.S.C. § 318(a) entered on July 26, 2020 (Paper No. 105) (the “Final Written Decision”) in the above-captioned *inter partes review* of United States Patent No. 9,737,154 B2 (the “‘154 patent”). ANM filed a Request for Rehearing (Paper No. 109) (the “Request for Rehearing”) of the Final Written Decision on August 24, 2020. The Board issued its Decision Denying Petitioner’s request for Rehearing of the Final Written Decision on September 24, 2020 (Paper No. 114), and in turn, issued an Erratum (Paper No. 115) on September 30, 2020. This notice is timely filed within 63 days of the Board’s Decision on ANM’s Request for Rehearing. 35 U.S.C. § 142; 37 C.F.R. §§ 90.2(a), 90.3(a), and (b)(1).

II. PETITIONER’S APPEAL

Please take notice that pursuant to 35 U.S.C. §§ 141(c), 319; and Federal Rule of Appellate Procedure 15(a), ANM hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision, including any related orders, decisions, rulings, and opinions, as well as any issues raised during that proceeding.

III. ISSUES ON APPEAL

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), ANM's issues on appeal include, without limitation, the following:

- (i) the Board's determination that claims 5, 6, and 15 are not unpatentable under 35 U.S.C. § 103 as obvious in light of Gifft, Mittal, Pillsbury, Ebel, and the knowledge of a person having ordinary skill in the art.
- (ii) the Board's decision granting Patent Owner's Revised Motion to Amend and allowing Patent Owner to substitute claims 23-25, 30-31, and 38-41 in accordance with 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121;
- (iii) The Board's determination that substitute claims 23-25, 30-31, and 38-41 are not unpatentable under 35 U.S.C. § 103 as obvious in light of Gifft, Mittal, Pillsbury, Ebel, and the knowledge of a person having ordinary skill in the art.
- (iv) The Board's violation of 5 U.S.C. § 706, of the Administrative Procedures Act, with respect to its consideration of evidence of secondary indicia of nonobviousness based on alleged infringement of the '154 patent by products accused by Patent Owner in the underlying District Court action of *Sleep Number Corporation v. ANM*, Case No. 5:18-cv-00357-AB-SP and related, pending litigation;

- (v) the Board's construction and interpretation of the claim language of the '154 patent;
- (vi) any finding or determination supporting or related to the above-mentioned issues as well as any other issues decided adversely to ANM, including any order, decisions, rulings, and/or opinions.

Pursuant to 37 C.F.R. § 90.2, ANM is filing a true and correct copy of this notice of appeal with the Director of the U.S. Patent and Trademark as provided in 37 C.F.R. § 104.2, and the Board as provided in 37 C.F.R. 41.10(a), and a true and correct copy of the same, along with the required docketing fees, with the Clerk of the U.S. Court of Appeals for the Federal Circuit as provided in Federal Circuit Rule 15(a)(1), as set forth in the accompanying Certificate of Filing.

Date: November 20, 2020

Respectfully Submitted,
SPENCER FANE LLP

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