

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 MOTION FOR ADDITIONAL DISCOVERY**

**TABLE OF CONTENTS**

**I.** Background. ....1

**II.** Advertising and Marketing Is Relevant to Rebut Commercial Success.....1

    A. There Is More Than a Mere Possibility of Useful Information.....2

    B. The Remaining *Garmin* Factors Weigh in Favor of the Request.....5

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>Demaco Corp. v. F. Von Langsdorff Licensing Ltd.</i> , 851 F.2d 1387 (Fed. Cir. 1988) .....	2
<i>Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC</i> , IPR2012-00001, Paper 26 (PTAB March 5, 2013) .....	1, 4
<i>Garmin</i> , IPR2012-00001, Paper 20.....	4
<i>Seadrill Americas, Inc., et al. v. Transocean Offshore Deepwater Drilling, Inc.</i> , IPR2015-01929, Paper 102 (PTAB May 18, 2017) .....	1
<i>WBIP, LLC v. Kohler Co.</i> , 829 F.3d 1317 (Fed. Cir. 2016) .....	1
<b>Regulations</b>	
37 C.F.R. § 42.6(e).....	7

Petitioner (“ANM”) requests the Board require Patent Owner (“PO”) produce certain financial information rebut PO’s assertion of commercial success. (*See Ex. 1040*).

## **I. Background.**

PO asserts several theories of secondary considerations of non-obviousness in its Response, in particular, commercial success of its products that incorporate the technology of the challenged patent. (*See Paper 45 at 66*) Additionally, PO submitted declarations asserting a nexus between nearly all its products and the claims of the challenged patent. (*See e.g. Ex. 2027, 2031, 2032*) The Board granted PO’s discovery requests aimed at these theories. Although in its initial objections on this issue PO inexplicably declined to use its own products in support of commercial success, it is clear from their Response that they rely on their own products’ success in support of their commercial success arguments. ANM intends to rebut this assertion by showing that any commercial success in the air adjustable mattress industry, including PO’s claims of success, is due to advertising expenditures for marketing, sales staff, and retail stores, and that the alleged success is not due their product’s incorporation of the claimed features of the challenged patent.

## **II. Advertising and Marketing Is Relevant to Rebut Commercial Success.**

The Board may grant additional discovery if it “is in the interests of justice,” and meets each factor of *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-

00001, Paper 26 at 6–7 (PTAB March 5, 2013). When commercial success is asserted, other factors that may be responsible for a product’s success become relevant in rebutting such contentions. *See e.g. WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1329-30 (Fed. Cir. 2016). Commercial success due to business acumen and clever marketing must be considered when assessing non-obviousness. *See Seadrill Americas, Inc., et al. v. Transocean Offshore Deepwater Drilling, Inc.*, IPR2015-01929, Paper 102 at 37-38 (PTAB May 18, 2017). ANM bears the burden of adducing evidence of advertising to rebut commercial success. *See Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1393 (Fed. Cir. 1988). ANM’s requests are in the interests of justice as evidence rebutting commercial success is relevant to an analysis of non-obviousness.

A. There Is More Than a Mere Possibility of Useful Information.

ANM has evidence tending to show something useful will be uncovered, and the proposed discovery will demonstrate that PO devotes significant resources to its marketing. The latest SEC form 10K from PO states that approximately 30-45% of its revenue is expended on “sales and marketing” and has grown from \$512 million in 2014 to \$687 million in 2018. (Ex. 1041 ¶ 2; Ex. 1042 at 33) Additionally, as PO has increased its “sales and marketing” budget, its overall revenue has increased each year in a correlated fashion. (Ex. 1042 at 33) PO is explicit in their own materials regarding the causation between this success “*Marketing drives growth in*

# 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.