
From: Bear, Brian <bbear@spencerfane.com>
Sent: Wednesday, December 11, 2019 11:21 AM
To: Trials; Tuttle, Kevin
Cc: Elliott, Kyle L.; Allee, J. Lori; Hare, Jaspal; Nath, Archana; Steve Moore; k ecia; Hansen, Andrew S.; Patton, Elizabeth A.; Engle, Devonia S.; Scott, Kris K.; Toft, Lukas
Subject: [EXT] RE: American National Manufacturing v. Sleep Number, IPR2019-00497, -500, and -514
Attachments: ANM v Select Comfort - Chart for Board.DOCX

Dear Board,

Please find attached a chart that has been prepared by the parties in accordance with guidance provided below.

Sincerely,

Brian Bear Of Counsel
Spencer Fane LLP

1000 Walnut, Suite 1400 | Kansas City, MO 64106
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BBear@spencerfane.com | spencerfane.com

From: Trials [Trials@USPTO.GOV]
Sent: Monday, December 09, 2019 2:14 PM
To: Tuttle, Kevin; Trials
Cc: Bear, Brian; Elliott, Kyle L.; Allee, J. Lori; Hare, Jaspal; A Nath; Steve Moore; k ecia; A Hansen; e patton; D Engle; Scott, Kris K.; L Toft
Subject: RE: American National Manufacturing v. Sleep Number, IPR2019-00497, -500, and -514

Counsel,

Petitioner will submit its proposed discovery requests to the Board. In addition, the parties will produce a joint discovery request chart as follows: For each disputed discovery request, Column 1 will include the disputed discovery request; column 2 will contain Petitioner's reason and explanation for the request; Column 3 will contain Patent Owner's objection to the disputed discovery request. The chart is limited to 3 pages.

A conference call will be scheduled once the Board receives both Petitioner's discovery requests as well as the discovery request chart.

Regards,

Andrew Kellogg,
Supervisory Paralegal
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
Direct: 571-272-5366

Sleep Number Corn

From: Tuttle, Kevin <ktuttle@spencerfane.com>

Sent: Friday, December 6, 2019 4:36 PM

To: Trials <Trials@USPTO.GOV>

Cc: Bear, Brian <bbear@spencerfane.com>; Elliott, Kyle L. <KElliott@spencerfane.com>; Allee, J. Lori <JAllee@spencerfane.com>; Hare, Jaspal <jhare@spencerfane.com>; A Nath <anath@foxrothschild.com>; Steve Moore <steve.moore@pillsburylaw.com>; kecia <kecia.reynolds@pillsburylaw.com>; A Hansen <ahansen@foxrothschild.com>; e patton <epatton@foxrothschild.com>; D Engle <dengle@foxrothschild.com>; Scott, Kris K. <kkscott@foxrothschild.com>; L Toft <ltoft@foxrothschild.com>

Subject: RE: American National Manufacturing v. Sleep Number, IPR2019-00497, -500, and -514

Dear Board:

Petitioner is following up with its request for a call with the Board to address the discovery described below.

The parties are available for a conference call with the Board on the following dates and times:

Monday, December 9 from 11 AM to 4 PM Eastern time; and
Tuesday, December 10 from 11 AM to 12 PM or 1 PM to 2 PM Eastern time

Kevin S. Tuttle Attorney at Law
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From: Bear, Brian <bbear@spencerfane.com>

Sent: Friday, November 22, 2019 3:06 PM

To: Trials <Trials@USPTO.GOV>

Cc: Tuttle, Kevin <ktuttle@spencerfane.com>; Elliott, Kyle L. <KElliott@spencerfane.com>; Allee, J. Lori <JAllee@spencerfane.com>; Bear, Brian <bbear@spencerfane.com>; Hare, Jaspal <jhare@spencerfane.com>; A Nath <anath@foxrothschild.com>; Steve Moore <steve.moore@pillsburylaw.com>; kecia <kecia.reynolds@pillsburylaw.com>; A Hansen <ahansen@foxrothschild.com>; e patton <epatton@foxrothschild.com>; D Engle <dengle@foxrothschild.com>; Scott, Kris K. <kkscott@foxrothschild.com>; L Toft <ltoft@foxrothschild.com>

Subject: American National Manufacturing v. Sleep Number, IPR2019-00497, -500, and -514

Dear Board:

Petitioner American National Manufacturing Inc. requests a call with the Board seeking authorization to file a motion in all three IPRs identified above for additional discovery to rebut Patent Owner's assertions of secondary considerations raised in Patent Owner's Response. Petitioner met and conferred with Patent Owner on November 22, 2019 and the parties were able to reach agreement on certain proposed discovery requests but did not arrive at an agreement to the remaining additional discovery sought by Petitioner. Petitioner will provide a court reporter for the call.

The parties are available for a conference call with the Board on the following dates and times:

Monday, December 2 from 11 AM to 4 PM Eastern time; and
Tuesday, December 3 from 11 AM to 4 PM Eastern time

Sleep Number Corp

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Sleep Number Corp



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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. IPR2019-00497

Case No. IPR2019-00500

Case No. IPR2019-00514

PETITIONER'S CHART OF
PROPOSED ADDITIONAL DISCOVERY REQUESTS

REQUEST	PETITIONER'S REASON FOR REQUESTING	PATENT OWNER'S ("PO") OBJECTION
<p><u>Interrogatory No. 1:</u> Identify on a quarterly or annual basis the total expenditures for your "sales and marketing," as identified in Sleep Number's 10-K statements since January 1, 1994.</p>	<p>Patent Owner has stated that their products practice the patents in suit. This Interrogatory is directed towards their factual basis for commercial success. This evidence will demonstrate that any commercial success experienced by PO is due to an extensive marketing, sales, and advertising campaign.</p>	<p>This request is overly broad, unduly burdensome, not sufficiently limited in time/scope, and not relevant to arguments pending before the Board. First, it seeks detailed and onerous data dating back 25 years. Second, PO has not relied on its own financials in making secondary considerations arguments and thus the requested data will not be useful. (<i>See, e.g.</i>, IPR2019-00497, Paper 45 at 58–67.) Third, the Board did not authorize discovery into Petitioner's detailed financials and should not do so for PO's financials. Therefore, this request does not satisfy the interests of justice or the <i>Garmin</i> factors and should be denied. <i>See Prong, Inc. v. Yeoshua Sorias</i>, IPR2015-01317, Paper 22 at 4–6 (P.T.A.B. Mar. 10, 2016).</p>
<p><u>Interrogatory No. 1:</u> Describe that nature and types of expenditures that are included in the line item "sales and marketing" as identified in Sleep Number's 10-K.</p>	<p><u><i>See Interrogatory No. 1</i></u></p>	<p><i>See supra</i> PO's Objection to Interrogatory No. 1.</p>
<p><u>Interrogatory No. 2:</u> Identify on a quarterly or annual basis the total expenditures for your "Cost of Sales" as identified in Sleep Number's 10-K statements since January 1, 1994.</p>	<p><u><i>See Interrogatory No. 1</i></u></p>	<p><i>See supra</i> PO's Objection to Interrogatory No. 1.</p>
<p><u>Interrogatory No. 3:</u> Describe that nature and type of expenditures</p>	<p><u><i>See Interrogatory No. 1</i></u></p>	<p><i>See supra</i> PO's Objection to Interrogatory No. 1.</p>

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