UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN NATIONAL MANUFACTURING INC.,
Petitioner,

v.

SLEEP NUMBER CORPORATION
f/k/a SELECT COMFORT CORPORATION,
Patent Owner.

_____

Case No. IPR2019-00514
Patent No. 5,904,172

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**PATENT OWNER'S OBJECTIONS TO PETITIONER'S REPLY 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, 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 1063 – (2019-12-11 Messner Depo Transcript)

Sleep Number incorporates the objections made by counsel during Dr. Messner's deposition, which are not waived by service of these Objections.

Sleep Number further objects to Exhibit 1063 under Fed. R. Evid. 801-802 because the statements made by Dr. Messner in Exhibit 1063 were made in connection with a different proceeding and are therefore out-of-court statements, which are being offered by Petitioner for the truth of the matter asserted.

Accordingly, this testimony is also irrelevant, misleading, and prejudicial under Fed. R. Evid. 401-403.

Exhibit 1064 – (2019-12-12 Messner Depo Transcript)

Sleep Number incorporates the objections made by counsel during Dr. Messner's deposition, which are not waived by service of these Objections.

Sleep Number objects to Exhibit 1064 under Fed. R. Evid. 401-403 as irrelevant, misleading, confusing, and unduly prejudicial because Exhibit 1064 is not cited to or relied upon by Petitioner in its Reply (Paper 69).

Sleep Number further objects to Exhibit 1064 under Fed. R. Evid. 801-802 because the statements made by Dr. Messner in Exhibit 1064 were made in connection with a different proceeding and are therefore out-of-court statements, which are being offered by Petitioner for the truth of the matter asserted. Accordingly, this testimony is further irrelevant, misleading, and prejudicial under Fed. R. Evid. 401-403.

Exhibit 1065 – (2019-12-18 Abraham Depo Transcript)

Sleep Number incorporates the objections made by counsel during Dr. Abraham's deposition, which are not waived by service of these Objections.

Exhibit 1066 – (2020-01-08 Messner Depo Transcript)

Sleep Number incorporates the objections made by counsel during Dr. Messner's deposition, which are not waived by service of these Objections.

Exhibit 1067 – (2020-01-08 Degen Depo Transcript)

Sleep Number incorporates the objections made by counsel during Mr. Degen's deposition, which are not waived by service of these Objections.

Exhibit 1068 – (2020-01-09 Mahoney Depo Transcript)

Sleep Number incorporates the objections made by counsel during Mr. Mahoney's deposition, which are not waived by service of these Objections.

Exhibit 1069 – (Giachetti Declaration in Support of Petitioner's Reply)

Sleep Number objects to Exhibit 1069 to the extent the testimony provided by Dr. Giachetti is not cited to or relied upon by Petitioner. For example, paragraphs 3-7, 14-20, 28-29, and 31-33 of Dr. Giachetti's declaration (Ex. 1069) are not cited to or relied upon in Petitioner's Reply (Paper 69). Accordingly, this testimony is irrelevant, misleading, confusing, and unduly prejudicial under Fed. R. Evid. 401-403.

Sleep Number further objects to Exhibit 1069, and the prior testimony of Dr. Giachetti, as misleading, confusing, and prejudicial under Fed. R. Evid. 401-403 because Dr. Giachetti has failed to identify or provide the documents or information upon which he relies and also relies upon documents and information not previously provided to Sleep Number. For example, Dr. Giachetti testifies in his declaration marked as Exhibit 1069 that, when preparing his prior declaration marked as Exhibit 1005 (which is his December 29, 2018 declaration submitted in support of the Petition), he reviewed the deposition of Eugene Duval (which was recently filed as Exhibit 1077). (*See* Ex. 1069 at ¶¶ 23-24.) However, Dr. Giachetti never disclosed that he reviewed or considered Mr. Duval's testimony in forming the opinions expressed in Exhibit 1005 until now, over a year later. As another example, Dr. Giachetti cites to and relies on documents not provided with his declaration. (*See*, *e.g.*, Ex. 1069 at ¶ 18.) Dr. Giachetti's failure to disclose or provide the information reviewed, relied upon, or considered in preparing his declarations is misleading and unduly prejudicial under Fed. R. Evid. 401-403.

Sleep Number further objects to Exhibit 1069 as unduly prejudicial under Fed. R. Evid. 401-403 to the extent it relies or discloses new arguments for the first time in support of Petitioner's Reply. (*See*, *e.g.*, Ex. 1069 at ¶¶ 15, 32, 36, 38.)

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