

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

---

PATENT OWNER'S REQUEST FOR ORAL ARGUMENT

Mail Stop Patent Board  
Patent Trial and Appeal Board  
P.O. Box 1450  
Alexandria, VA 22313-1450

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

Pursuant to the March 5, 2020, Revised Scheduling Order (Paper 77) and 37 C.F.R. § 42.70(a), Patent Owner Sleep Number Corporation f/k/a Select Comfort Corporation (“Patent Owner” or “Sleep Number”), respectfully requests oral argument in the above-referenced proceeding.

More specifically, Patent Owner requests that oral argument in each of the following related proceedings, all currently scheduled for May 20, 2020 (if requested), occur at the same time: IPR2019-00497 (related to USPN 8,769,747); IPR2019-00500 (related to USPN 9,737,154); and IPR2019-00514 (related to USPN 5,904,172). IPR2019-00497, -00500, and -00514 all involve related patents, two of which are in the same patent family, and the third of which is incorporated by reference in the other two. Further, one of the prior art references asserted in IPR2019-00497 and IPR2019-00500 is the challenged patent in IPR2019-00514. Given the scope of issues and significant overlap between these proceedings, Patent Owner respectfully requests 150 minutes (delineated below) for the three proceedings in a combined hearing over the course of at least one day if not two days given the multitude of patents and motions at issue. Additionally, Patent Owner respectfully requests to reserve a portion of its time for a brief sur-rebuttal to Petitioner’s rebuttal.

Patent Owner proposes as follows: (1) that arguments on IPR2019-00514 take place first, for a period of 60 minutes allotted to each side; (2) that arguments on IPR2019-00497 and IPR2019-00500 take place second, and conjunctively, for a period of 90 minutes allotted to each side; and (3) that arguments on the motions to exclude in each proceeding take place conjunctively but separately from the foregoing (if unresolved and intended to be heard).

With respect to the order of arguments, it is efficient and appropriate to address arguments as to IPR2019-00514 first because it involves the earliest patent in time (the '172 Patent), because the '172 Patent is incorporated by reference into both the '747 and '154 Patents at issue in the other two proceedings, and because the '172 Patent is asserted as a prior art reference in the other two proceedings. It is efficient and appropriate to address arguments on IPR2019-00497 and IPR2019-00500 second, and conjunctively, because the '747 and '154 Patents are in the same family, because they stem from the same patent application, because they have similar disclosures and similar claims, because the Petitions involve the assertion of identical prior art references, and because both patents are subject to motions to amend involving similar claim amendments. Moreover, by addressing the '172 Patent first, the parties will need to spend less time discussing its disclosures in the later oral argument on the '154 and '747 Patents. Lastly, it is appropriate that

arguments on the motions to exclude in all three proceedings, if unresolved and intended to be heard, take place separately and conjunctively because there will likely be substantial overlap between them.

With respect to time limits, Patent Owner respectfully requests that the length of oral argument to address the Petition in IPR2019-00514 (instituted on thirteen different grounds utilizing at least eight different references) be the ordinary 60 minutes per side, as stated in the Board's Trial Practice Guide.<sup>1</sup> However, for the proposed consolidated oral argument in IPR2019-00497 and IPR2019-00500, Patent Owner respectfully requests that the length of oral argument be a combined 90 minutes per side (rather than the ordinary 60 minutes each for a total of 120 minutes). This would allow both sides to conjunctively address both the Petitions and Motions to Amend (involving six obviousness grounds utilizing at least eight references as well as arguments related to written description, enablement, and indefiniteness), which will result in a savings of total time.

---

<sup>1</sup> See Trial Practice Guide Update (August 2018) at pg. 19, available at [https://www.uspto.gov/sites/default/files/documents/2018\\_Revised\\_Trial\\_Practice\\_Guide.pdf](https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf).

Patent Owner and Petitioner have met and conferred and agree that each side be given 60 minutes for IPR2019-00514 but otherwise do not agree as to the foregoing order of arguments and timetables. Patent Owner is willing to further confer with Petitioner in the event the Board requests it.

In accordance with 37 C.F.R. § 42.70(a), Patent Owner specifies the following issues to be addressed with respect to IPR2019-00497, IPR2019-00500, and IPR2019-00514 during oral argument:

1. The proper standard for a person of ordinary skill in the art.
2. The state of the prior art at the time of the respective inventions.
3. The proper construction of several terms in the claims of the respective patents.
4. The validity of the respective patents, including the failure of Petitioner to meet its burden of proving the claims of the patents as obvious over the references and combinations thereof cited in the respective Petitions, (*see* IPR2019-00497, Paper 2; IPR2019-00500, Paper 2; IPR2019-00514, Paper 2), and including Patent Owner's rebuttal evidence, such as on secondary considerations.
5. As proposed in Patent Owner's Revised Motion to Amend in IPR2019-00497 and Motion to Amend in IPR2019-00500, the non-obviousness of

# 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.