

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 MOTION TO EXCLUDE PETITIONER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(c)

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INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c), and the Scheduling Orders (Papers 11, 77), Patent Owner Sleep Number Corporation (“PO”) moves to exclude Petitioner American National Manufacturing Inc.’s (“Petitioner” or “ANM”) Exhibits 1005, 1013, 1027-1028, 1041-1047, 1049, 1052, 1063-1064, 1068-1069, 1071-1072, 1074-1075, 1077-1079 and 2068, or portions thereof (“the Exhibits”), which are inadmissible under the Federal Rules of Evidence (“FRE”) as set forth in PO’s timely-served objections (“Objections”). (*See* Papers 12, 28, 51, 70.)

ARGUMENT

A motion to exclude must explain why evidence is admissible under the FRE (*e.g.*, relevance or hearsay). *Legend3D, Inc. v. Prime Focus Creative Servs. Can. Inc.*, IPR2016-00806, Paper 73 at 8-9 (PTAB Sept. 18, 2017); *see* 37 C.F.R. §§ 42.62, 42.64; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,758, 48,767 (Aug. 14, 2012) (noting parties may submit motions to exclude regarding evidence “believed to be inadmissible”).

I. PORTIONS OF DR. ROBERT GIACHETTI’S DECLARATION AND ASSOCIATED EXHIBITS SHOULD BE EXCLUDED.

Exhibits 1005 (portions thereof), 1013, and 1027-1028 should be excluded because they are not cited in the Petition, (*see* Paper 2), and thus lack relevance to this proceeding and/or are misleading, confusing, and unfairly prejudicial. *See* FRE 401-403; 37 C.F.R. § 42.104(b)(5) (exclusion of evidence not specifically

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