

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

PETITIONER'S MOTION TO EXCLUDE EVIDENCE

TABLE OF CONTENTS

I.	INTRODUCTION AND STATEMENT OF RELIEF	1
II.	Exhibit 2041 – Declaration of John Abraham	1
A.	Legal Standard for Admissibility of Expert Opinions	1
B.	Dr. Abraham’s Declaration Falls Short of the Reliability and Disclosure Required for Admission	2
III.	Exhibits 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, and 2053 – Infringement Contentions Related to Third Party Air Controllers	3
IV.	Exhibit 2054 – Declaration of George Edwards	4
V.	Exhibit 2055 – Declaration of Carl Degen	7
A.	Expert Evidence Regarding Commercial Success Requires Controlling for other Factors that May Explain Sales	8
B.	Mr. Degen Did Not Control for Factors Related to Commercial Success ...	8
VI.	Exhibit 2058 – Declaration of Elizabeth Patton	10
VII.	Exhibit 2059 – Trial Transcript from Select Comfort Corporation v. John Baxter, et al., Case No. 12-CV-02899-DWF-SER (“the Baxter Case”)	12
VIII.	Ex. 2060 – Dires LLC Emails	13
IX.	Ex. 2061 – Dires LLC Emails	13
X.	Exhibits 2070, 2071, 2072, 2073, 2074, and 2075 – PO’s District Court Infringement Contentions	14
XI.	Exhibit 2084 – Optimus Emails	15

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Anderson v. United States</i> , 417 U.S. 211 (1974).....	12
<i>Apple Inc. v. INVT SPE LLC</i> , IPR2018-01476, 2020 WL 1808193 (Apr. 8, 2020)	5
<i>Apple, Inc. v. Samsung Elec. Co. Ltd.</i> , 839 F.3d 1034 (Fed. Cir. 2016)	9
<i>Bancorporation v. Kemper Securities Group, Inc.</i> , 58 F.3d 1306 (8th Cir. 1995).....	4, 14
<i>Cable Elec. Products, Inc. v. Genmark, Inc.</i> , 770 F.2d 1015 (Fed. Cir. 1985)	8
<i>Elder v. Tanner</i> , 205 F.R.D. 190 (E.D. Tex. 2001)	3, 6
<i>Geo. M. Martin Co. v. Alliance Machine Systems Intern. LLC</i> , 618 F.3d 1294 (Fed. Cir. 2010)	8
<i>Invitrogen Corp. v. Clontech Labs., Inc.</i> , 429 F.3d 1052 (Fed. Cir. 2005)	3
<i>McManaway v. KBR, Inc.</i> , 852 F.3d 444 (5th Cir. 2017).....	8
<i>Rembrandt Vision Tech., L.P. v. Johnson & Johnson Vision Care, Inc.</i> , 725 F.3d 1377 (Fed. Cir. 2013)	7
<i>Ritchie v. Vast Resources, Inc.</i> , 563 F.3d 1334 (Fed. Cir. 2009)	9
<i>Sheehan v. Daily Racing Form, Inc.</i> , 104 F.3d 940 (7th Cir. 1997).....	3

Case No. IPR2019-00514

Patent No. 5,904,172

Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 182 v. New York State Teamsters Council Health & Hosp. Fund.,
909 F. Supp. 102 (N.D.N.Y. 1995)12

TNS Media Research, LLC v. Tivo Research and Analytics, Inc.,
629 F. App'x 916 (Fed. Cir. 2015).....9

United States v. Velarde–Gomez,
224 F.3d 1062 (9th Cir.2000).....14

Other Authorities

3D-Matrix, Ltd. v. Menicon Co., Ltd.,
No. IPR2014-00398, 2014 WL 3851279 (PTAB Aug. 1, 2014).....2

I. INTRODUCTION AND STATEMENT OF RELIEF

Pursuant to the Board's rules, Petitioner American National Manufacturing Inc. ("ANM") moves to exclude the following exhibits submitted by Patent Owner ("PO") in support of its Patent Owner Response (Papers 46-47; "POR") and Patent Owner Surreply (Paper 78; "POS"): Ex. 2041, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2058, 2059, 2060, 2061, 2070, 2071, 2072, 2073, 2074, 2075, and 2084 under the Federal Rules of Evidence ("FRE"). More detailed reasons are set forth below.

II. Exhibit 2041 – Declaration of John Abraham

PO relies on the declaration of John Abraham to assert nexus for secondary indicia of nonobviousness, namely, commercial success and copying. POR at 59-60, 63-67; POS at 12, 22-24. ANM duly objected to the admission of his declaration under FRE 702 and 37 C.F.R. § 42.65(a), as Abraham failed to adequately disclose the basis for his opinions and due to the unreliability of his methods. Petitioner's *Objections to Patent Owner's Evidence*, Paper 51 ("OBE") at 5-9. Thus, the evidence should be excluded.

A. Legal Standard for Admissibility of Expert Opinions

FRE 702 permits expert witness testimony if: "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue; (b) the testimony is based on sufficient facts

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.