

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

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

**AMENDED PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE (PAPER 82)**

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I. INTRODUCTION

Petitioner American National Manufacturing, Inc. (“ANM” or “Petitioner”) files this Opposition in response Patent Owner Sleep Number Corp.’s (f/k/a Select Comfort Corp.) (“PO” or “Sleep Number”) Motion to Exclude (Paper 82) (the “MTE”).

PO’s motion should be denied.

II. LEGAL STANDARD

“The party moving to exclude evidence bears the burden of proving that it is entitled to the relief requested—namely, that the material sought to be excluded is inadmissible under the Federal Rules of Evidence (“FRE”).” *Sanofi-Aventis U.S. LLC v. Immunex Corp.*, No. IPR2017-01884, Paper 96 (PTAB Feb. 14, 2019) (citing 37 C.F.R. §§ 42.20(c) and 42.62(a)).

III. ARGUMENT

A. Dr. Giachetti’s testimony should not be excluded

A motion to exclude must “[i]dentify where in the record the evidence sought to be excluded was relied upon.” Practice Guide, § II.K(b). PO’s argument in this section fail to make a proper case for exclusion given PO fails to identify where ANM is relying on the objected-to evidence. In addition, the objected-to portions of Dr. Giachetti’s declaration provide helpful background and context and are thus admissible.

B. Supporting exhibits re ANM's opposition to PO motion for additional discovery should not be excluded

1. Exs. 1041–42 and 1047 are not inadmissible hearsay

Exs. 1041–42 are screenshots from Dun & Bradstreet related to corporate financial information. These exhibits fall squarely within the ambit of FRE 803(17) hearsay exception for market reports and commercial publications.

With respect to Ex. 1046, it is a brief regarding vacatur related to an International Trade Commission. Given that PO has been trumpeting that ITC case here (e.g., Ex. 2015 and 2016 (ITC papers)), it is relevant that the ITC vacated its positions related to the '172 patent at issue here. See Ex. 1080 (In the Matter of *CERTAIN AIR MATTRESS SYSTEMS, COMPONENTS THEREOF, AND MEHTODS OF USING THE SAME*, No. 337-TA-971, 2020 WL 416443 (U.S.I.T.C. Jan. 22, 2020)).

With respect to Ex. 1047, PO objects to ¶¶ 3–4 and 8–9 of Mr. Miller's declaration without elaborating why these statements are believed to be inadmissible hearsay. A review those paragraphs reveal the testimony generally relates to PO itself. This testimony is not inadmissible hearsay because any underlying statements are used against a party opponent (*see* FRE 801(d)(2)) or an exception applies (*see* FRE 804(b)(3) or 807). Other testimony (Ex. 1047, ¶ 9) is not hearsay because Mr. Miller is providing factual information (e.g., how much he was paid) of which he had personal knowledge.

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