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Corporation*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SLEEP NUMBER CORPORATION,
Plaintiff,
v.
SIZEWISE RENTALS, LLC,
Defendant.

Case No. 5:18-cv-00356 AB (SPx)
5:18-cv-00357 AB (SPx)

**STIPULATION REGARDING STAY
OF DISTRICT COURT ACTIONS**

SLEEP NUMBER CORPORATION,
Plaintiff,
v.
AMERICAN NATIONAL
MANUFACTURING, INC.,
Defendant.

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*Counsel for Plaintiff Sleep Number
Corporation*

Plaintiff Sleep Number Corporation and Defendants Sizewise Rentals, LLC and American National Manufacturing, Inc. (collectively, the “Parties”) by and through their undersigned counsel, hereby enter into this Stipulation Regarding Stay of District Court Actions as follows:

WHEREAS, Plaintiff filed the above-captioned actions in this Court on February 20, 2019 asserting patent infringement of U.S. Patent No. 5,904,172 (“the ‘172 Patent”), U.S. Patent No. 8,769,747 (“the ‘747 Patent”), and U.S. Patent No. 9,737,154 (“the ‘154 Patent”) (collectively, “the patents-in-suit”). [Dkt. 1 in Case No. 5:18–cv–00356; Dkt. 1 in Case No. 5:18–cv–00357.]

WHEREAS, the Parties have litigated the actions, largely in consolidated format, since that time.

WHEREAS, in late December 2018, Defendants filed Petitions for *Inter Partes* Review (“IPR”) on each of the patents-in-suit, IPR2019-00497, -00500, and -00514.

WHEREAS, on January 4, 2019, Defendants notified Plaintiff that they intended to file a motion to stay pending the IPRs, which the parties met and conferred about on January 7, 2019.

WHEREAS, on January 9, 2019, Defendants filed a Motion to Stay Pending *Inter Partes* Review [Dkt. 133 in Case No. 5:18–cv–00356; Dkt. 134 in Case No. 5:18–cv–00357], which Plaintiff opposed.

WHEREAS, on January 25 and February 5, 2019, the Patent Trial & Appeal Board (“PTAB”) accorded filing dates to Defendants’ Petitions.

WHEREAS, the hearing on Defendants’ Motion to Stay is set before the Court on Friday, February 15, 2019.

WHEREAS, the Parties have continued to meet and confer regarding Defendants’ Motion to Stay and have reached an agreement that the district court actions shall be stayed pending the PTAB’s institution decision on the IPRs.

WHEREAS, the Parties have good cause for this stipulation because they have reached an agreement that will avoid further court intervention, will conserve resources for both the Parties and the Court, and will allow their dispute to proceed in the most timely manner possible.

THEREFORE, IT IS HEREBY STIPULATED by and between the Parties as follows:

1. With the exceptions set forth in paragraphs 2 and 3 below, the above-captioned district court actions shall be immediately stayed until the PTAB has issued institution decisions on each of the IPRs. The stay will remain in effect subject to paragraphs 4 and 5 below.

2. Defendants' February 14, 2019 deadline to file an amended pleading pursuant to the Court's Order on Plaintiff's Motion to Dismiss dated January 31, 2019 [Dkt. 141 in Case No. 5:18-cv-00356; Dkt. 140 in Case No. 5:18-cv-00357] shall be extended to February 18, 2019. Because an amended pleading would render any answer moot, Plaintiff need not file an Answer to Defendants' Second Amended Answer and Counterclaims. However, in the event Defendants do not file an amended pleading, Plaintiff will have until March 4, 2019 to file an Answer to Defendants' Second Amended Answer and Counterclaims. Further, any response to Defendants' amended pleading due February 18, 2019 shall be due within 14 days from the date the stay is lifted.

3. The stay does not affect (1) Defendants' now February 18, 2019 deadline to file an amended pleading pursuant to the Court's Order on Plaintiff's Motion to Dismiss dated January 31, 2019 [Dkt. 141 in Case No. 5:18-cv-00356; Dkt. 140 in Case No. 5:18-cv-00357]; or (2) Defendants' February 22, 2019 deadline to serve amended invalidity contentions pursuant to the Court's Order Granting Stipulation dated January 30, 2019 [Dkt. 139 in Case No. 5:18-cv-00356; Dkt. 138 in Case No. 5:18-cv-00357]. The foregoing deadlines remain pending.

4. The stay shall be lifted with respect to the '172 Patent as a result of an issuance of a decision denying institution of IPR2019-00514, which will go into effect once the PTAB has issued institution decisions on all three IPRs. The stay shall be lifted with respect to the '154 and '747 Patents as a result of an issuance of a decision denying institution of IPR2019-00497 and -00500, which will go into effect once the PTAB has issued institution decisions on all three IPRs. If the stay is lifted as to less than all of the patents-in-suit, any party may then file a motion with (or otherwise seek guidance from) this Court to sever or bifurcate the claims at issue following meet and confer efforts with the opposing party.

5. In the event all three IPRs are instituted, the stay will be lifted as to all three patents-in-suit upon the issuance of the Final Written Decision from the PTAB in the last pending IPR, unless Plaintiff elects to appeal any of the Final Written Decisions from the PTAB. In the event Defendants elect to appeal any of the Final Written Decisions from the PTAB, Defendants may file a motion to stay with this Court following meet and confer efforts with Plaintiff. Further, again, if the stay is lifted as to less than all of the patents-in-suit, any party may then file a motion with (or otherwise seek guidance from) this Court to sever or bifurcate the claims at issue following meet and confer efforts with the opposing party.

6. The Parties will provide quarterly updates to the Court regarding the status of the IPRs and any appeals.

7. The hearing scheduled for Friday, February 15, 2019 on Defendants' Motion to Stay Pending *Inter Partes* Review [Dkt. 133 in Case No. 5:18-cv-00356; Dkt. 134 in Case No. 5:18-cv-00357] may be cancelled.

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