

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.

---

IPR2019-00497 (Patent 8,769,747 B2)  
IPR2019-00500 (Patent 9,737,154 B2)  
IPR2019-00514 (Patent 5,904,172)

---

Before SCOTT A. DANIELS, FRANCES L. IPPOLITO, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION  
Denying-in-Part Parties' Requests to File Motion to Expunge  
37 C.F.R. §§ 42.5, 42.56

IPR2019-00497 (Patent 8,769,747 B2)  
IPR2019-00500 (Patent 9,737,154 B2)  
IPR2019-00514 (Patent 5,904,172)

The parties emailed the Board on September 1, 2020, requesting guidance on expungement of confidential information from the records of the above captioned proceedings pursuant to 37 C.F.R. § 42.56.

The Board notes that a Request for Rehearing was filed in each of IPR2019-00497 and IPR2019-00500. Paper 109. Because we have not yet ruled on the Rehearing Requests in these proceedings, the time period for appealing the Final Written Decisions to the U.S. Court of Appeals for the Federal Circuit has not yet commenced to run. *See* 37 C.F.R. § 90.3(b)(1) (setting the time for appeal at sixty-three days after action on a request for rehearing). Consequently, as to these two proceedings, the panel views the parties' email as a Request to File a Motion to Expunge, and determines the request to be premature.

Once the Board enters its decisions on the Rehearing Requests in each of IPR2019-00497 and IPR2019-00500, either party may either file a motion to expunge or file a motion to preserve the record pending appeal, if an appeal is filed.<sup>1</sup> Until a decision is made on such motions the Board will maintain the confidentiality of the documents filed under seal in each of these proceedings.

In IPR2019-00514 the time period to file an appeal has not yet expired. *See* 37 C.F.R. § 90.3(a)(1) (setting the time for appeal at sixty-three days after the date of the final Board decision.). Depending on the intent of the parties going forward, the parties may file either a motion to expunge if no appeal to the Federal Circuit will occur, or a motion to preserve the

---

<sup>1</sup> Any motion that is not a joint motion should include a statement regarding whether the other party opposes the motion.

IPR2019-00497 (Patent 8,769,747 B2)  
IPR2019-00500 (Patent 9,737,154 B2)  
IPR2019-00514 (Patent 5,904,172)

record pending appeal, if an appeal is anticipated. Again, until a decision is made on such a motion, the Board will maintain the confidentiality of the documents filed under seal in the proceeding.

Accordingly, it is

ORDERED that the parties' Request to File a Motion to Expunge in IPR2019-00497 and IPR2019-00500 are denied without prejudice;

FURTHER ORDERED that in IPR2019-00497 and IPR2019-00500 the parties may file a motion to expunge or a motion to preserve the record pending appeal after we enter our decisions on Petitioner's Requests for Rehearing;

FURTHER ORDERED that in IPR2019-00514 the parties are authorized to file either a motion to expunge or a motion to preserve the record pending appeal if an appeal is anticipated; and

FURTHER ORDERED that the Board will maintain the confidentiality of the documents filed under seal in each proceeding until further notice.

IPR2019-00497 (Patent 8,769,747 B2)  
IPR2019-00500 (Patent 9,737,154 B2)  
IPR2019-00514 (Patent 5,904,172)

For PETITIONER:

Kyle Elliott  
Kevin Tuttle  
Jaspal Hare  
SPENCER FANE LLP  
kelliott@spencerfane.com  
ktuttle@spencerfane.com  
jaspal428@gmail.com

For PATENT OWNER:

Kecia Reynolds  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
kecia.reynolds@pillsburylaw.com

Steven Moore  
ZHONG LUN  
stevemoore@zhonglu.com

Luke Toft  
FOX ROTHSCHILD LLP  
ltoft@foxrothschild.com