

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. (Patent 5,904,172)

JOINT MOTION TO PRESERVE THE RECORD PENDING APPEAL

Case No. IPR2019-00514

Patent No. 5,904,172

Patent Owner and Petitioner (collectively “the Parties”) jointly move that the entire docket in IPR2019-00514 be preserved pending an anticipated appeal, including preservation of all sealed documents in non-public form. The Parties filed a Joint Stipulation for Entry of a Stipulated Protective Order in this proceeding, and the Board issued a Final Written Decision (“FWD”) conditionally granting the Parties’ Motions to Seal as to the exhibits referred to therein. The Board also approved the Protective Order with required modifications, and thereafter, the Parties submitted a Revised Joint Stipulated Protective Order addressing the required modifications. On September 8, 2020, the Board issued an order with respect to this proceeding denying the Parties leave to file a motion to expunge, but inviting them to file “a motion to preserve the record pending appeal, if an appeal is anticipated.” Paper 110, pg. 2-3.

The Parties have met and conferred regarding the Board’s September 8, 2020 order, and the Parties believe that an appeal is anticipated. Although the Parties have not identified all the specific issues that may be part of such an appeal and/or cross appeal, given the FWD’s reliance, in part, on confidential exhibits, the Parties believe it would be in the public interest to preserve the entirety of the record as it currently exists in anticipation of such an appeal. Other Board panels have granted similar requests. *See e.g. Tetra Tech Canada v. Georgetown Rail Equipment Company*, IPR2019-00662, Paper 42 at 53-4 (P.T.A.B. August 25, 2020); *Illumina*,

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Inc. v. Columbia Univ., IPR2012-00006, Paper 133 at 3-4 (P.T.A.B. April 25, 2014);
Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd., IPR2013-00128, Paper 93
at 2-3 (P.T.A.B. Sep. 10, 2014); *LKQ Corp. v. Clearlamp, LLC*, IPR2013-00020,
Paper 77 at 2 (P.T.A.B. Dec. 19, 2014).

As such, the Parties jointly move the Board to enter an order preserving the record in its current form, with exhibits that have been marked confidential or have otherwise been sealed being maintained in their current status. The Parties further believe it would be appropriate for the Board to order that any motion to expunge the record in this proceeding should be filed within 14 days after the time period for filing a notice of appeal is exhausted (if no appeal is filed), or 14 days after the Federal Circuit issues its final mandate (if an appeal is filed).

Date: September 15, 2020

Respectfully Submitted,
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that a copy of the foregoing JOINT MOTION TO PRESERVE THE RECORD PENDING APPEAL was served in its entirety on September 15, 2020, by electronic mail, as authorized by Patent Owner's Updated Mandatory Notices, directed to the attorneys of record for Patent Owner at the following correspondence address of record:

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