

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN NATIONAL MANUFACTURING INC.,  
Petitioner

v.

SLEEP NUMBER CORPORATION  
f/k/a SELECT COMFORT CORPORATION,  
Patent Owner

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Case No. IPR2019-00514

Patent No. 5,904,172

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**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE  
PURSUANT TO 37 C.F.R. § 42.64(B)(1)**

Pursuant to 37 C.F.R. § 42.64 and the Federal Rules of Evidence, as applied by the Board, Petitioner American National Manufacturing Inc. (“ANM”) provides the following objections to evidence submitted by Patent Owner Sleep Number Corporation (“Sleep Number”). These objections are timely served within five (5) business days.

ANM serves Sleep Number with these objections to provide notice that ANM may move to exclude the challenged evidence under 37 C.F.R. § 42.64(c) unless Sleep Number cures the defects associated with the challenged evidence identified below. In addition, ANM reserves the right to present further objections to this or additional evidence submitted by Sleep Number, as allowed by the applicable rules or other authority.

**Exhibit 2040 – “Declaration of Dr. William Messner” – Under Seal, redacted version filed publicly**

Petitioner objects to Exhibit 2040 to the extent the testimony provided by Dr. Messner is not cited to or relied upon by the Response. Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2040 as including “[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based” in violation of 37 C.F.R. § 42.65(a) and Fed. R. Evid. 702-703, and 705. For example,

paragraphs 14, 18, 30-35, 40, 45, 48-49, 61-62, 71, 72, 74-77, 82-85, 88-90, 92, 97, 100-101, 103, 105-106, 108-110, 113-114, 116, 118, 120, 125-128, 130-132, 136-141, 145, 147, 152-153, 156-157, 160-162, 166, 169-171, 173, 176-177, 179, 182-183, 187-188, 190-193, 197, 199, 203, 205, 207-208, and 210-216 of Dr. Messner's report fail to provide underlying facts or data on which statements and/or the opinion is based, either by (1) providing no citations, (2) failing to cite where in a reference the disclosure supporting the statement and/or opinion can be found, or (3) citing to a reference that fails to provide support for the statement and/or opinion be proffered. This is also true for any analysis that cites to paragraphs identified herein as deficient. Petitioner further objects to this testimony as irrelevant, misleading, unduly prejudicial, and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2040 under Federal Rules of Evidence 702, 703 and 705 in that the declarant relies on undisclosed conversations with unknown individuals who purportedly are "skilled in the art" or those that are "in the field of adjustable air beds." Petitioner objects to these statements as improperly concealing the basis for the declarant's opinions and in concealing potential fact witnesses from Petitioner. This is found in paragraphs 34, 75, and 109.

Petitioner objects to Exhibit 2040 to the extent it references unspecified other arguments to support a position. Accordingly, this testimony is misleading and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2040 under Federal Rule of Evidence 702, 703, and 705 in that the declarant engages in improper speculation that is not based on any specialized knowledge or on any fact within the proceeding including but not limited to paragraphs 94, 147, 166, 180, 183, 184, 208, 214, and 216.

Petitioner objects to Exhibit 2040 as the document contains red line revisions from an unknown source which leads to the conclusion that the statement from the declarant is not entirely his own. This red lining occurs at least on page 63. As this is not entirely a statement from the declarant the entire exhibit must be excluded.

Petitioner objects to the extent Exhibit 2040 relies on evidence not filed in this proceeding in violation of 37 C.F.R. § 42.63(a). For example, paragraph 32 references the evidence USPN 4,224,706, USPN 5,586,347, and USPN 5,652,484; none of these documents are filed in the form of an exhibit. Petitioner objects to the reliance on such evidence as misleading, prejudicial, and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2040 under Federal Rule of Evidence 702,703 and 705 as the expert has testified to matters of law that are incorrect, misstated, or otherwise not complete or are not the proper basis for a technical expert to opine including paragraphs 19, 24, 26, 27, 28, and 209.

**Exhibit 2041 – “Declaration of John Abraham”**

Petitioner objects to Exhibit 2041 to the extent the testimony provided by Dr. Abraham is not cited to or relied upon by the Response. Accordingly, this testimony is also irrelevant, misleading, and confusing under Fed. R. Evid. 401-403.

Petitioner objects to Exhibit 2041 under Federal Rule of Evidence 702, 703, and 705 as the testimony does not reliably apply the expert’s purported standards to the facts at hand. On one hand, the declarant states that he is “not provid[ing] any opinions on infringement” but throughout the declaration, the declarant opines on issues of infringement. Both cannot be true.

Petitioner further objects to Exhibit 2041 under Federal Rules of Evidence 401, 403 and 702 as the entire statement improperly contains ultimate legal conclusions related to infringement which is not relevant in this proceeding as Congress has specifically instructed PTAB not to consider issues of infringement. See Hr’g Tr., Sep. 5, 2019, Paper 1027 at 12:8–13:15 and 26:4–10; see also

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