

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. IPR2019-00497
Patent No. 8,769,747 B2

**PATENT OWNER SLEEP NUMBER CORPORATION'S
NOTICE OF APPEAL**

via PTAB E2E
Patent Trial and Appeal Board

via Overnight Mail
Office of the Solicitor
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314

via CM/ECF
United States Court of Appeals for the Federal Circuit

On November 20, 2020, Petitioner American National Manufacturing (“Petitioner”) filed “Petitioner’s Notice of Appeal of Final Written Decision” (Paper 117) in the above referenced *inter partes* review.

Pursuant to 35 U.S.C. §§ 141(c), 142, 319; 37 C.F.R. §§ 90.2(a), 90.3(a), and Federal Rules of Appellate Procedure/Federal Circuit Rule 4(a)(1)(C), please take notice that Patent Owner Sleep Number Corporation (“Sleep Number”) hereby appeals/cross-appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered by the Patent Trial and Appeal Board (“Board”) on July 23, 2020 (the “Final Written Decision”) (Paper 105) in IPR2019-00497, an *inter partes* review (“IPR”) of United States Patent No. 8,769,747 (“747 Patent”) based on the “Trial Instituted Document” entered on July 24, 2019 (Paper 11) (the “Institution Decision”).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Sleep Number’s non-exclusive list of potential issues on appeal include: (i) whether the Board erred by raising and addressing arguments not properly raised in Petitioner’s Petition for IPR; (ii) the Board’s findings that Petitioner sufficiently articulated how and why a person of ordinary skill in the art (“POSITA”) would combine prior art references Giffit, Mittal, and Pillsbury; (iii) the Board’s findings and claim constructions related to the term “pressure sensing means,” “desired pressure setpoint,” “substantially equal,” and

“acceptable pressure target error range;” (iv) the Board’s finding that claims 1-4, 7-12, and 14-19 of the ‘747 Patent were rendered obvious by Gifft in view of Mittal and Pillsbury, especially considering the substantial evidence of secondary indicia of non-obviousness; (v) the Board’s finding that a POSITA would be motivated to combine prior art reference Ebel with Gifft, Mittal, and Pillsbury; and (vi) the Board’s findings regarding secondary indicia of non-obviousness. Other possible issues on appeal further include any other issues responsive to the appeal issue(s) raised by Petitioner or any other issues decided adversely to Sleep Number in any order, decision, ruling, phone conference, opinion, or final decision.

Sleep Number is filing a true and correct copy of this Notice of Appeal with the Clerk of the United States Court of Appeals for the Federal Circuit, along with the required docketing fee, as set forth in the accompanying Certificate of Filing. Also, in compliance with 37 C.F.R. § 90.2(a)(1), Sleep Number is filing a true and correct copy of this Notice of Appeal with the Director of the United States Patent and Trademark Office.

Respectfully submitted,

Dated: December 4, 2020

By: /s/ Luke Toft

Luke Toft (Reg. No. 75,311)
Andrew S. Hansen (*pro hac vice*)
Archana Nath (*pro hac vice*)
Elizabeth A. Patton (*pro hac vice*)
FOX ROTHSCHILD LLP
222 South Ninth Street, Suite 2000
Minneapolis, MN 55402-3338
Telephone: (612) 607-7000
ltoft@foxrothschild.com
ahansen@foxrothschild.com
anath@foxrothschild.com
epatton@foxrothschild.com

Steven A. Moore (Reg. No. 55,462)
ZHONG LUN
1717 Kettner Boulevard, Suite 200
San Diego, CA 92101
Telephone: (323) 930-5690
stevemoore@zhonglun.com

Kecia J. Reynolds (Reg. No. 47,021)
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, NW
Washington, DC 20036
Telephone: (202) 663-8000
kecia.reynolds@pillsburylaw.com

Attorneys for Patent Owner
Sleep Number Corporation

CERTIFICATE OF FILING

The undersigned hereby certifies that, in addition to being electronically filed through PTAB E2E, a true and correct copy of the above-captioned PATENT OWNER SLEEP NUMBER CORPORATION'S NOTICE OF APPEAL is being filed by overnight mail with the Director on December 4, 2020, at the following address:

Office of the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22314

The undersigned also certifies that a true and correct copy of the above-captioned PATENT OWNER SLEEP NUMBER CORPORATION'S NOTICE OF APPEAL and the filing fee is being filed via CM/ECF with the Clerk's Office of the United States Court of Appeals for the Federal Circuit on December 4, 2020.

Dated: December 4, 2020

/s/ Luke Toft

Luke Toft (Reg. No. 75,311)
Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned hereby certifies that on December 4, 2020, the foregoing PATENT OWNER SLEEP NUMBER CORPORATION'S NOTICE OF APPEAL was served via e-mail, as authorized by the Petitioner, at the following email correspondence address of record:

Kyle L. Elliott
kelliott@spencerfane.com
Kevin S. Tuttle
ktuttle@spencerfane.com
Brian T. Bear
bbear@spencerfane.com
Lori J. Allee
jallee@spencerfane.com
SPENCER FANE LLP
1000 Walnut Street, Suite 1400
Kansas City, MO 64106

Jaspal S. Hare
jhare@spencerfane.com
SPENCER FANE LLP
5700 Granite Parkway, Suite 650
Plano, TX 75024

Dated: December 4, 2020

/s/ Luke Toft
Luke Toft (Reg. No. 75,311)
Counsel for Patent Owner