

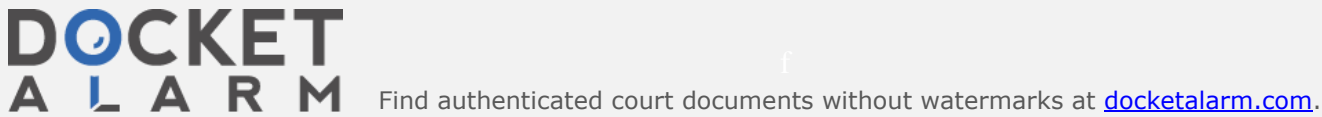
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

SkyHawke Technologies, §	
LLC, §	
	§
Petitioner §	Case IPR 2014-00437
	§ Case IPR 2014-00438
VS. §	
	§
L&H Concepts, Inc., §	Patent 5,779,566
	§
Patent Owner §	
_____ §	

DEPOSITION OF ALAN BALL
Austin, Texas
Friday, February 20, 2015

Reported by:
MICHEAL A. JOHNSON, RMR, CRR
JOB NO. 90458



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February 20, 2015
8:37 a.m.

Deposition of ALAN BALL, held at the offices of Fish & Richardson, P.C., 111 Congress Avenue, Suite 810, Austin, Texas, pursuant to Agreement before Micheal A. Johnson, a Registered Merit Reporter, Certified Realtime Reporter, and Notary Public of the State of Texas.

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A P P E A R A N C E S
OBLON McCLELLAND MAIER & NEUSTADT
Attorney for Petitioner
1940 Duke Street
Alexandria, Virginia 22314
BY: Thomas Fisher, ESQ.

FISH & RICHARDSON
Attorney for Patent Owner
111 Congress Avenue
Austin, Texas 78701
BY: David Morris, ESQ.

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BALL - 2/20/15
P R O C E E D I N G S
ALAN BALL

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION

BY MR. FISHER:

Q. Good morning, Mr. Ball.

A. Hi.

Q. Could you please state your name for the record.

A. Alan Ball.

Q. And your address?

A. 50 Francesca Avenue, Somerville, Massachusetts 02144.

Q. Do you have any prior deposition experience?

A. Yes.

Q. When?

A. The most recent one was about three weeks ago.

Q. What case was that in?

A. Dyson v Euro-Pro.

Q. What was the last --

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BALL - 2/20/15

A. Euro-Pro.

Q. Euro-Pro. What's the technology involved in that?

A. Vacuum cleaners.

Q. Which side are you representing or --

A. I was hired by Euro-Pro to provide an expert opinion on a design patent.

Q. Design patent. What issues did you testify about?

A. A number of issues. It's a complicated case.

Q. What's the technology? You said, I think, vacuum cleaners.

Did you testify both with respect to infringement and validity or both or which?

A. I'm not sure what I'm at liberty to discuss.

Q. I don't want the substance of anything, just the issues. Are you an infringement expert? Are you a validity expert? Are you a damages expert?

MR. MORRIS: Objection, form.

BY MR. FISHER:

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 2 Q. I can move on. That's fine. Other
 3 than the -- what's the status of that case?
 4 A. It's ongoing.
 5 Q. What court is it in?
 6 A. I don't recall.
 7 THE REPORTER: I need to take a
 8 quick break.
 9 (Recess Taken From 8:38 a.m. To
 10 8:40 a.m.)
 11 BY MR. FISHER:
 12 Q. So prior to the Dyson case, how
 13 many times have you been deposed?
 14 A. Twice.
 15 Q. What cases.
 16 A. Emerson Electric versus Anaheim
 17 Manufacturing and Ethicon versus Covidien.
 18 Q. What issues did you testify on in
 19 the Emerson case?
 20 A. The -- there were issues of trade
 21 dress infringement and design patent
 22 infringement.
 23 Q. What side were you on?
 24 A. I was working for the counsel
 25 representing Anaheim and Anaheim was the

1 BALL - 2/20/15
 2 MR. MORRIS: Objection, form.
 3 A. If you want to put it that way.
 4 BY MR. FISHER:
 5 Q. Did your side win a summary
 6 judgment?
 7 A. The summary judgment was against
 8 Ethicon.
 9 Q. And you represented Ethicon?
 10 A. Yes.
 11 Q. What was the outcome of the
 12 Samsung/Apple case in the UK?
 13 A. The Samsung/Apple case was -- they
 14 found that there was no infringement and the
 15 judge agreed with my testimony.
 16 Q. So you represented Apple?
 17 A. Uh-huh.
 18 Q. Was that a design patent case?
 19 A. No.
 20 Q. Was it a patent case?
 21 A. It was something called a
 22 registered community design. It's the
 23 European version of a design patent.
 24 Q. Have you ever served as an expert
 25 in a matter that involved a utility patent?

1 BALL - 2/20/15
 2 defendant.
 3 Q. And what issues did you testify on
 4 in the Ethicon case?
 5 A. It was a design patent case.
 6 Q. Infringement or validity or --
 7 A. Yes, both of those.
 8 Q. In your CV it states that the --
 9 Ethicon case and it was a summary judgment.
 10 What was the basis of the summary judgment
 11 decision?
 12 A. The summary judgment, I don't know
 13 if I can accurately capture it all, but I
 14 believe that they found that some of the -- I
 15 believe that they found that there was a
 16 functionality within the design patent and
 17 they -- the judge said that they would -- it
 18 was invalid and I guess he invalidated the
 19 patent. I'm not quite sure the right
 20 terminology. And I also believe there was a
 21 statement in his judgment about
 22 noninfringement, which -- but I don't recall
 23 all of the details in the judgment. The case
 24 is on appeal.
 25 Q. So your side lost.

1 BALL - 2/20/15
 2 A. I'm sorry. I didn't hear you.
 3 Q. Have you ever served as an expert
 4 in a matter that involved a utility patent?
 5 A. Oh, yes, I have.
 6 Q. Which one?
 7 A. I served as an expert in a case
 8 between Nokia and HTC.
 9 Q. And that was all just -- all
 10 utility patents?
 11 A. Yes.
 12 Q. What side did you represent?
 13 A. I represented HTC. The counsel
 14 that represented HTC hired me.
 15 Q. What issues did you give opinions
 16 on?
 17 A. I'm trying to remember. Do you
 18 have my resume? I'd like to look at that. It
 19 will help refresh my memory on some of these.
 20 Q. Sure.
 21 MR. MORRIS: It's Exhibit 2013.
 22 BY MR. FISHER:
 23 Q. I'm going to hand you what's been
 24 marked in the IPRs as Exhibit 2013. It's your
 25 CV. Is that a current CV of yours?

1 BALL - 2/20/15
 2 A. Yes, it is.
 3 Q. When did you begin working on the
 4 Dyson case?
 5 A. I'm sorry. What was that?
 6 Q. When did you begin working on the
 7 Dyson case?
 8 A. I believe it was towards the end of
 9 summer. I'm not sure the exact date, but
 10 August time frame, I believe.
 11 Q. In your work as an expert witness
 12 in these patent litigations, has a motion ever
 13 been filed to exclude your testimony?
 14 A. Yes.
 15 Q. In which matters?
 16 A. The Ethicon Endo -- excuse me, I
 17 misspoke. The Emerson Electric v Anaheim
 18 case.
 19 Q. And what was the result of that
 20 motion?
 21 A. It was denied.
 22 Q. What position did the other side
 23 take in seeking to exclude your testimony?
 24 A. They said I had not designed a
 25 garbage disposal.

1 BALL - 2/20/15
 2 Q. Had you?
 3 A. I've designed all sorts of kitchen
 4 products that macerate food. I haven't
 5 designed a garbage disposal.
 6 Q. Any other motions to exclude your
 7 testimony?
 8 A. No.
 9 Q. So just setting forth the rules --
 10 you've been through this before. I'm going to
 11 ask you a series of questions and I would like
 12 you to give answers to those questions. If
 13 you don't understand the question, please ask
 14 me to clarify it and I will attempt to do so.
 15 We'll take a break every hour. Do
 16 not take a break -- we will not take a break
 17 while there's a question pending. So if you
 18 want to take a break, wrap up and then we'll
 19 take a break. Fair enough?
 20 A. Sounds good.
 21 Q. And I will understand that if you
 22 answer the question, that you understood the
 23 question. Is that fair? You understand what
 24 I'm saying there? If you don't understand my
 25 question, please ask for clarification and I

1 BALL - 2/20/15
 2 will attempt to clarify it. If you answer the
 3 question, I will understand that you
 4 understood the question.
 5 A. Okay.
 6 Q. What did you do to prepare for your
 7 deposition?
 8 A. I reviewed my declaration and I
 9 reviewed the references that I used when I
 10 wrote the declaration, and I met with
 11 Mr. Morris and Mr. Hoffman yesterday afternoon
 12 to review some of that with them.
 13 Q. How long did you meet?
 14 A. I arrived here at the office at
 15 11:30. I left at 5. During that time we ate
 16 lunch, which was probably 45 minutes. They
 17 were in and out of the room. So probably
 18 three or four hours.
 19 Q. About half a day. Was anyone else
 20 present?
 21 A. The secretary came in with the
 22 lunch, but no.
 23 Q. Did you make any phone calls?
 24 A. I made one phone call, yes.
 25 Q. With respect to this matter?

1 BALL - 2/20/15
 2 A. It was a personal matter.
 3 Q. How long did you spend preparing
 4 for the deposition, including the review you
 5 did?
 6 A. One day.
 7 Q. Other than Mr. Morris and
 8 Mr. Hoffman, did you speak with anyone else
 9 about your deposition?
 10 A. No.
 11 Q. Did you review any materials that
 12 are not identified in your declaration?
 13 A. No.
 14 Q. Did you review the transcript of
 15 Mr. Wilens' deposition?
 16 A. No.
 17 Q. Did you speak to Mr. Wilens?
 18 A. No.
 19 Q. Have you ever spoke to Mr. Wilens?
 20 A. No.
 21 Q. I would like to just quickly go
 22 through your background, starting with your
 23 education after high school. What is a
 24 bachelor's of industrial design, just very
 25 generally?

1 BALL - 2/20/15
 2 A. It's a bachelor's degree that
 3 Syracuse University gave me after a five-year
 4 course of study in industrial design.
 5 Q. It's a five-year program?
 6 A. Yes, sir.
 7 Q. And does it include any engineering
 8 coursework?
 9 A. Yes, it does.
 10 Q. What types?
 11 A. There are basic courses like
 12 calculus that I took. There are specific
 13 manufacturing processes courses that I took.
 14 There are other introductory engineering
 15 courses that I took regarding analysis.
 16 There's drafting courses that I took. It's --
 17 one of the three legs of the tripod that forms
 18 industrial design is the technical leg.
 19 Q. What are the other two legs?
 20 A. There's an aesthetic leg and there
 21 is something we call human factors which is --
 22 includes ergonomics and psychology, marketing,
 23 things like that, understanding the person
 24 you're designing the product for.
 25 Q. What school is the degree issued

1 BALL - 2/20/15
 2 from? Is it in the school of engineering --
 3 A. It's in the school of visual and
 4 performing arts.
 5 Q. Is any of the coursework out of the
 6 school of engineering?
 7 A. I believe the courses that I
 8 referenced were part of the engineering
 9 department.
 10 Q. Did you take any coursework on
 11 graphical user interface design?
 12 A. Yes.
 13 Q. What types of courses were those?
 14 A. There were basic graphic design
 15 courses that I took, and I also took courses
 16 as part of an information studies minor that
 17 talked about designing interfaces, either
 18 paper-based, like surveys, or perhaps
 19 on-screen. At the time I got my degree, user
 20 interface design was not as it is now. It was
 21 an embryonic --
 22 Q. What year was that?
 23 A. -- study. 1987 I graduated.
 24 Q. That's a good year. The graphics
 25 design course, did that cover specifically

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 2 human computer interaction?
 3 MR. MORRIS: Objection, form.
 4 A. I wouldn't say specifically, no.
 5 BY MR. FISHER:
 6 Q. So back to my earlier question. I
 7 asked if you had taken any coursework in
 8 graphical user interface. What I'm talking
 9 more specifically about is human computer
 10 interaction.
 11 A. Uh-huh.
 12 Q. Had you taken any coursework in
 13 human computer interaction?
 14 MR. MORRIS: Objection, form.
 15 A. Yes.
 16 BY MR. FISHER:
 17 Q. And which courses? Would that be
 18 the graphics design course or the --
 19 A. I recall we took -- there was a
 20 class offered, computer graphics. I recall
 21 that throughout my thesis coursework there
 22 were projects that revolved around interacting
 23 with computers. So the understanding that
 24 there is a user interface on a computer
 25 product that needed to be considered as part

1 BALL - 2/20/15
 2 of the design program within our coursework
 3 was present throughout the entire program.
 4 Q. What was your thesis in?
 5 A. I designed a CNC hobby mill for
 6 home hobbyists to basically -- it was a
 7 precursor to a 3D printer.
 8 Q. CNC or C --
 9 A. CNC.
 10 Q. What's that stand for?
 11 A. Computer numerical control.
 12 Q. Just give me a 30-second
 13 description of a CNC hobby mill.
 14 A. Well, you may be familiar with a
 15 Bridgeport mill. It's a machine that has a
 16 rotating cutter and that rotating cutter can
 17 go up and down in a Z axis. It also has a
 18 fixture in a component that can go front to
 19 back and right to left, X and Y. And by
 20 controlling that with a computer, you can
 21 basically carve any shape you want out of a
 22 block of material. It's the way injection
 23 molds are cut. And my thesis project was
 24 taking the technology that was used in
 25 industry and bringing it into a consumer

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