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

J SQUARED, INC. d/b/a)
UNIVERSITY LOFT COMPANY,)
)Case IPR2015-00774
Petitioner,)Case IPR2015-00958
)Patent 8,585,136
vs.)
)
SAUDER MANUFACTURING)Oblon Docket No.:
COMPANY,)464032US and
)464045US
Patent Owner.)
-----)

DEPOSITION OF DAVID G. HARTING
Troy, Michigan
Wednesday, January 20, 2016

Reported by:
Paula S. Raskin, CSR-4757
JOB NO. 102144

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January 20, 2016
9:43 a.m.

Deposition of DAVID G. HARTING, held at the offices of Young Basile Hanlon & MacFarlane, PC, 3001 West Big Beaver Road, Suite 624, Troy, Michigan, before Paula Raskin, CSR-4757, a Notary Public of the State of Michigan.

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

MR. MCKEOWN: Okay. Tom, did you have some issues?

MR. YOUNG: Yes. Mr. McKeown, we note that you have noticed Mr. Harting, as well as the other two witnesses, for two depositions. Do you plan to take them separately and in series?

MR. MCKEOWN: I was contemplating just doing one deposition where, at least I think for Mr. Harting, the declarations that were submitted in both were identical, unless I'm missing something. So I think we can just simply -- I don't see the need for separate proceedings unless you see a point for that.

MR. YOUNG: Okay. Well, two points: The IPRs have not been consolidated. They are separate and they have their own separate and distinct issues.

I'm ready to admit that there's -- I expect in this deposition, there will be

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A P P E A R A N C E S:

OBLON, MCCLELLAND, MAIER & NEUSTADT
Attorneys for Petitioner
1940 Duke Street
Alexandria, Virginia 22314

BY: SCOTT MCKEOWN, ESQ.
RUBY NATNITHITHADHA, ESQ.

and

BAHRET & ASSOCIATES
Attorney for Petitioner
320 North Meridian Street
Indianapolis, Indiana 46204

BY: WILLIAM BAHRET, ESQ.

YOUNG BASILE HANLON & MACFARLANE
Attorneys for Patent Owner
3001 West Big Beaver Road
Troy, Michigan 48084
BY: THOMAS YOUNG, ESQ.

ALSO PRESENT:

Phil Bontrager

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DAVID G. HARTING subject matter of your inquiry that will be common to both IPRs. So I think it makes sense, as you propose, to have that all in one transcript, but I will, however, insist that the issues of the IPRs be kept entirely separate; not necessarily in separate transcripts, but separate in terms of the examination, no crossover between them.

MR. MCKEOWN: Well, to the extent that we're talking about one IPR as compared to another, I think we'll make the transcript clear which one we're talking about. That's the plan anyway.

MR. YOUNG: All right. My preference is when you get to the substantive issues, that you continue through one IPR and all of those issues without getting into the other; and when you're done with that, say so, and then we'll get into the other IPR and the issues that are unique to it.

MR. MCKEOWN: Okay. To the extent that we get into issues like that, I'll

1 DAVID G. HARTING
 2 make clear which IPR we're talking about.
 3 I'm not sure that we'll get to that level
 4 of granularity, but I'll keep that in mind.
 5 MR. YOUNG: Fair enough. The other
 6 is confidentiality. I don't see a need to
 7 have this transcript classified unless you
 8 feel otherwise.
 9 MR. MCKEOWN: I certainly won't be
 10 disclosing any confidential information of
 11 my client. To the extent anything comes up
 12 in the questioning, feel free to designate
 13 it as appropriate.
 14 MR. YOUNG: Okay. I'll keep my eye
 15 out for it. I doubt that there will be
 16 unless and until we get to Mr. Bontrager
 17 somewhere down the line.
 18 The last thing I want to mention to
 19 you is I am aware of your concerns with
 20 respect to getting home and so forth.
 21 MR. MCKEOWN: Okay.
 22 MR. YOUNG: I'm perfectly willing to
 23 accommodate you. We can carry the
 24 proceedings forward other than during
 25 normal business hours if it looks like

1 DAVID G. HARTING
 2 member of the Bar of the State of Michigan
 3 and represent the patent owners, Sauder
 4 Manufacturing Company, in both of the IPRs
 5 for which this deposition is being taken.
 6 And to my left...
 7 MR. BONTRAGER: I'm Philip E.
 8 Bontrager, president and CEO of Sauder
 9 Manufacturing, the patent owner that is the
 10 subject of the two IPR petitions.
 11 MR. MCKEOWN: Thank you. I'm joined
 12 today by two additional individuals. I'll
 13 start with the person immediately to my
 14 right.
 15 MR. BAHRET: I am to your right.
 16 Yes, I'm Bill Bahret. I'm with the
 17 firm of Bahret & Associates in
 18 Indianapolis, and I represent the
 19 petitioner, University Loft Company.
 20 MS. NATNITHADHA: My name is Ruby
 21 Natnithadha, and I work with Scott at
 22 Oblon.
 23 MR. MCKEOWN: Spell your last name,
 24 please.
 25 MS. NATNITHADHA:

1 DAVID G. HARTING
 2 that's necessary from your practical
 3 standpoint. I do wish to accommodate you
 4 in that regard.
 5 MR. MCKEOWN: I appreciate that.
 6 MR. YOUNG: Okay. Then with that,
 7 away we go.
 8 MR. MCKEOWN: All right. Can you
 9 please state your name for the record.
 10 THE WITNESS: David Harting,
 11 H-A-R-T-I-N-G.
 12 MR. MCKEOWN: Good morning,
 13 Mr. Harting. My name is Scott McKeown, and
 14 I'm an attorney for University Loft. I'll
 15 be asking you some questions today about
 16 some declarations that you've submitted in
 17 some USPTO proceedings.
 18 Would the gentlemen to your right
 19 like to enter their appearances into the
 20 record?
 21 MR. YOUNG: Actually I'm to his
 22 left.
 23 MR. MCKEOWN: Sorry. My right.
 24 MR. YOUNG: My name is Thomas Young.
 25 I am a registered patent attorney and a

1 DAVID G. HARTING
 2 N-A-T-N-I-T-H-I-T-H-A-D-H-A.
 3 MR. MCKEOWN: Mr. Harting, have you
 4 ever been deposed before?
 5 THE WITNESS: Yes.
 6 MR. MCKEOWN: So you're generally
 7 familiar with the way the process works.
 8 THE WITNESS: Generally.
 9 MR. MCKEOWN: Okay. Just as a
 10 reminder, we have a court reporter here, so
 11 I would just ask that you speak loudly and
 12 clearly, no head nods. We're creating a
 13 paper transcript, so we want to make sure
 14 that the information and the exchange is
 15 just clear on the record.
 16 THE WITNESS: Will do.
 17 MR. MCKEOWN: To the extent you need
 18 a break for any reason, feel free to just
 19 ask for it. As long as there's no question
 20 pending, I have no problem stopping
 21 whenever you feel the need.
 22 Your counsel may object to the
 23 format or different issues with my
 24 questioning, but you understand that unless
 25 you're instructed not to answer, you're

1 DAVID G. HARTING
 2 still expected to answer my questions.
 3 THE WITNESS: I do.
 4 MR. MCKEOWN: Okay.
 5 EXAMINATION
 6 BY MR. MCKEOWN:
 7 Q. Hand you a copy of an exhibit that's
 8 been previously marked Sauder Exhibit 2039.
 9 MR. YOUNG: Thank you.
 10 Q. Do you recognize this exhibit,
 11 Mr. Harting?
 12 A. I do.
 13 Q. And what is it?
 14 A. It is my declaration.
 15 Q. If you turn to Page 13, that's your
 16 signature there, correct?
 17 A. It is.
 18 Q. Is there anything you want to change
 19 in this declaration?
 20 A. There is not.
 21 Q. So there's no corrections or
 22 mistakes that you've learned about since you've
 23 signed it?
 24 A. There are some typos, but they don't
 25 affect the content.

1 DAVID G. HARTING
 2 worked on it?
 3 A. It was the span of time I worked on
 4 it.
 5 Q. How much time would you estimate
 6 that you spent actually working on the
 7 declaration?
 8 A. I seem to recall it was around 40
 9 hours.
 10 Q. Okay.
 11 A. I don't recall precisely.
 12 Q. Did you author all of the text in
 13 this declaration?
 14 A. Yes, I did.
 15 Q. Did you work with anyone to prepare
 16 this declaration?
 17 A. What do you mean by work with?
 18 Q. Well, presumably you drafted this
 19 declaration in cooperation with someone else
 20 that was --
 21 A. My attorney asked me to prepare it,
 22 yes.
 23 Q. Is there anyone else you worked with
 24 that had input to this declaration?
 25 A. No.

1 DAVID G. HARTING
 2 Q. So no substantive issues.
 3 A. No.
 4 Q. So as we mentioned at the outset,
 5 this declaration was submitted in two
 6 proceedings. So unless we get to issues that
 7 are unique to one IPR over the other, I'm
 8 simply going to reference this as your
 9 declaration. If at any time you're unclear
 10 about that reference or you think we're getting
 11 into issues that are unique to one IPR over the
 12 other, I'll certainly try to alert you to it,
 13 but if you notice something like that, please
 14 let me know.
 15 How long did you spend preparing
 16 this declaration?
 17 A. I think it was about two weeks.
 18 Q. Two weeks, okay. Do you remember
 19 the time frame?
 20 A. It was late October into November.
 21 Q. Of 2000..
 22 A. 2015. It may have been three weeks.
 23 Q. Okay. So when you say you spent
 24 three weeks, was that you spent a full three
 25 weeks on this, or that's the span of time you

1 DAVID G. HARTING
 2 Q. Were there drafts of this
 3 declaration before this version was submitted?
 4 A. I did have drafts of that
 5 declaration, yes.
 6 Q. Do you recall how many?
 7 A. I don't.
 8 Q. Did you save those drafts?
 9 A. I did. Unfortunately my wife
 10 reformatted the computer that I had borrowed
 11 from her and they are no longer in existence.
 12 Q. Did you communicate the drafts to
 13 anyone?
 14 A. I had sent those drafts to my
 15 attorney.
 16 Q. Through e-mail or...
 17 A. Through e-mail.
 18 Q. Do you know, maybe I'm not
 19 pronouncing his name correctly but another
 20 person that will be deposed today, Anthony
 21 Warncke?
 22 A. I do.
 23 Q. And who is he?
 24 A. He's an employee of Sauder
 25 Manufacturing and he's an engineer that's

1 DAVID G. HARTING
 2 familiar with the project.
 3 Q. Did you discuss this declaration
 4 with him?
 5 A. Not -- no.
 6 Q. So at no point did you discuss this
 7 declaration with him?
 8 A. No.
 9 Q. Were any of the drafts communicated
 10 to him?
 11 A. No.
 12 Q. And Mr. --
 13 MR. MCKEOWN: Am I pronouncing --
 14 Bontrager?
 15 MR. BONTRAGER: Bontrager.
 16 Q. Do you know Mr. Bontrager?
 17 A. I do.
 18 Q. And who is he?
 19 A. He's the president and CEO of Sauder
 20 Manufacturing.
 21 Q. And did you discuss this declaration
 22 with him at any point?
 23 A. No.
 24 Q. Did you communicate any of the
 25 drafts to him at any point?

1 DAVID G. HARTING
 2 Q. Was there anyone else present during
 3 those meetings?
 4 A. Yes.
 5 Q. Who else?
 6 A. Mr. Bontrager and Mr. Warncke and
 7 Mr. Jacob.
 8 Q. Who is Mr. Jacob?
 9 A. He is another attorney.
 10 Q. Another attorney at this firm?
 11 A. Yes.
 12 Q. Did you meet with anyone via
 13 telephone?
 14 A. At what point?
 15 Q. At any point during your
 16 preparation.
 17 A. I spoke to Mr. Young over the phone
 18 in October and November.
 19 Q. Okay.
 20 A. I didn't speak with anyone over the
 21 phone this week besides my wife.
 22 Q. So during the meetings with your
 23 attorney, there were no -- well, strike that.
 24 During the meeting with your
 25 attorney, there was no one patched in on

1 DAVID G. HARTING
 2 A. No.
 3 Q. Did you do anything to prepare for
 4 today's deposition?
 5 A. I reviewed all the relevant
 6 documents.
 7 Q. And what relevant documents were
 8 they?
 9 A. The IPRs, all the patents that are
 10 referenced, and my declaration.
 11 Q. Anything else?
 12 A. No.
 13 Q. Did you meet with anyone to perform
 14 that preparation?
 15 A. That preparation, I read -- I
 16 performed by myself before I got here.
 17 Q. Okay. When did you get here?
 18 A. I got here on Monday.
 19 Q. Did you meet with anyone here to
 20 prepare for your deposition?
 21 A. I met with my attorney.
 22 Q. And how long did you meet with your
 23 attorney?
 24 A. I guess that was about -- let's
 25 see -- well, portions of two days.

1 DAVID G. HARTING
 2 teleconference?
 3 A. No.
 4 Q. Okay. I'm handing you a document
 5 that's been previously marked, J Squared,
 6 Incorporated, Exhibit 1001.
 7 Do you recognize this document?
 8 A. I do.
 9 Q. You see at the top there's a
 10 paragraph labeled "(75) Inventors:" Do you see
 11 that?
 12 A. I do.
 13 Q. Do you know these inventors?
 14 A. I know two of them.
 15 Q. Which two?
 16 A. Mr. Warncke and Mr. Hagerty.
 17 Q. You do not know Mr. Jameson?
 18 A. I know of Mr. Jameson. I don't
 19 believe I've ever met him.
 20 Q. You see immediately below that
 21 section "Inventors," it reads "Assignee: Sauder
 22 Manufacturing" ?
 23 A. Yes.
 24 Q. That's currently your employer,
 25 correct?

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