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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 ANTHONY J. WARNCKE
Troy, Michigan
Wednesday, January 20, 2016

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

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January 20, 2016
1:45 p.m.

Deposition of ANTHONY J. WARNCKE,
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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ANTHONY J. WARNCKE,
called as a witness, having been duly sworn
by a Notary Public, was examined and
testified as follows:
MR. MCKEOWN: Good afternoon. Could
you state your name for the record, please?
THE WITNESS: Anthony J. Warncke.
MR. MCKEOWN: My name is Scott
McKeown. I'm an attorney for University
Loft, and today I'll be asking you some
questions about a declaration you submitted
in a patent office proceeding. Do you
understand that?
THE WITNESS: Yes.
How do you spell your last name?
MR. MCKEOWN: M-C-K-E-O-W-N.
Have you been deposed before?
THE WITNESS: Not that I recall.
MR. MCKEOWN: Do we need to enter
appearances, or do you just want to copy it
into the record?
(Off the record at 1:46 p.m.)
(Back on the record at 1:47 p.m.)
MR. YOUNG: Thomas N. Young for
patent owner and Mr. Warncke. And to my

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APPEARANCES:

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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ANTHONY J. WARNCKE
left is Mr. Philip Bontrager, who is the
CEO of patent owner, Sauder Manufacturing
Company.
MR. MCKEOWN: To my right is...
MR. BAHRET: I'm Bill Bahret from
Bahret & Associates in Indianapolis. I
represent the petitioner, University Loft
Company.
MS. NATNITHITHADHA: My name is Ruby
Natnithadhha, spelled
N-A-T-N-I-T-H-I-T-H-A-D-H-A, and I work
with Scott at Oblon.
MR. MCKEOWN: So since you haven't
been deposed before, you may not be
familiar with the process. I'll just go
over some ground rules.
So I'll ask you some questions, and
I'd ask that you give me audible answers,
clear answers, because we're creating a
transcript. So try not to nod your head or
say uh-huh or yeah or things like that.
If there's anything about my
question that you're not clear on, just ask
me to clarify, I'll be happy to do that.

1 ANTHONY J. WARNCKE
 2 We can take breaks. If you need a
 3 break, just let me know you need a break.
 4 As long as there's not a question pending,
 5 I have no problem with stopping whenever.
 6 Your attorney may object to various
 7 issues or forms of the question, but unless
 8 he instructs you not to answer, you're
 9 expected to answer. Do you understand
 10 that?
 11 THE WITNESS: Yes.
 12 EXAMINATION
 13 BY MR. MCKEOWN:
 14 Q. Okay. So let me pass to you an
 15 exhibit that's been previously marked,
 16 Exhibit 2046.
 17 Do you recognize that exhibit?
 18 A. It appears to be my declaration,
 19 yes.
 20 Q. And when you say declaration, you're
 21 referring to the submission in the patent
 22 office proceedings. To be clear, that's IPR
 23 2015-00774 and IPR 2015-00958, correct?
 24 A. Yes.
 25 Q. Are you aware of any difference in

1 ANTHONY J. WARNCKE
 2 the declarations, or are they basically the
 3 same?
 4 So there's two proceedings. Did you
 5 do two different declarations or just one that
 6 serves in both proceedings?
 7 A. I have one declaration document, and
 8 as you'll find within the preparation here, I
 9 addressed the two different cases separately.
 10 Q. Okay. So I'll just refer to your
 11 declaration, and to the extent we get into any
 12 issues that are unique to one IPR over another,
 13 I'll point that out or you feel free to point
 14 that out as well.
 15 A. Okay.
 16 Q. So Page 30, on the back of the
 17 declaration, that is your signature, correct?
 18 A. Yes.
 19 Q. Has anything changed since you've
 20 signed this declaration that you want to update
 21 or clarify before we start?
 22 A. I don't know if anything changed. I
 23 did, in reading through this yesterday, notice
 24 a typo. If I can find that, I'll point it out.
 25 Q. No need. If it's -- if nothing's

1 ANTHONY J. WARNCKE
 2 impacting the merits or the substance, I'm not
 3 that interested in typos. I make them all the
 4 time.
 5 So why don't we turn to Page 2 of
 6 your declaration.
 7 Based upon this description here, it
 8 appears as though you've been employed by
 9 Sauder Manufacturing Company for roughly 16
 10 years. Is that correct?
 11 A. Exactly 16 and a month.
 12 Q. And your current position is what?
 13 A. The title is director of product
 14 development.
 15 Q. And what does director of product
 16 development entail?
 17 A. A number of things. Including
 18 amongst that is direct responsibility for
 19 product engineering, engagement in management
 20 of the product portfolio, assisting in the
 21 movement of projects through our process.
 22 Q. How long did you spend preparing
 23 this declaration?
 24 A. That would be difficult to say.
 25 My -- I harken back to writing term papers for

1 ANTHONY J. WARNCKE
 2 college, and that's been a number of years ago,
 3 but my modus operandi there has always been to
 4 work in fits and starts.
 5 Q. So you worked on this over a period
 6 of time?
 7 A. Correct.
 8 Q. Do you know roughly when that
 9 time frame would have occurred?
 10 A. The last of it concluded with my
 11 signature.
 12 Q. Sure.
 13 A. I can't recall exactly when it would
 14 have started.
 15 Q. Was it weeks? Months?
 16 A. Weeks.
 17 Q. Do you know how much time total you
 18 would have spent on start to finish creating
 19 this declaration?
 20 A. I'm trying to sum it up.
 21 All told, maybe a couple weeks.
 22 Q. And did you draft all of the text in
 23 this declaration?
 24 A. Yes.
 25 Q. Before you signed this declaration,

1 ANTHONY J. WARNCKE
 2 were there intermediate drafts that you
 3 created?
 4 A. Well, as I said a moment ago, I tend
 5 to work in fits and starts, which means I'm
 6 jotting notes down on pieces of paper and at
 7 some point then compile them and wordsmith
 8 them, if you will. My jots and notes I don't
 9 end up keeping once they're captured in
 10 typewritten form.
 11 Q. Did you work with anyone to create
 12 this declaration?
 13 A. No.
 14 Q. Did you work with an attorney to
 15 create this declaration?
 16 A. Tom here -- as you know, I've never
 17 been deposed before. You might be able to
 18 conclude that I've never been party to an IPR
 19 before, and so of course I needed some
 20 direction as to format and the type of areas
 21 that need to be addressed to be complete for
 22 your sake and for the whole process sake.
 23 Q. Did you work with anyone else other
 24 than the attorney?
 25 A. No.

1 ANTHONY J. WARNCKE
 2 chair with no -- none of the novel features and
 3 functions that are in this '136 patent.
 4 Q. And when was that?
 5 A. I can't say exactly. Perhaps two to
 6 three years after the launch of Trey.
 7 Q. Did you discuss your declaration
 8 with Mr. Harting at any point?
 9 A. No.
 10 Q. And I presume you know Mr. Bontrager
 11 at the other end of the table.
 12 A. Of course.
 13 Q. Did you discuss your declaration
 14 with Mr. Bontrager at any point?
 15 A. He was quite interested that I was
 16 continuing to make progress on both end
 17 deliverables to meet.
 18 Q. And just so the record's clear, who
 19 is Mr. Bontrager?
 20 A. Sorry if I don't know the exact
 21 title, but essentially CEO, president of Sauder
 22 Manufacturing Company.
 23 Q. What did you do to prepare for your
 24 deposition today?
 25 A. Certainly got a good night's sleep.

1 ANTHONY J. WARNCKE
 2 Q. Did you communicate any work product
 3 or drafts to anyone other than Mr. Young?
 4 A. I have three teenage boys, and I
 5 like to keep them informed about what it is
 6 that my work includes, so yeah, they read
 7 those.
 8 Q. Did you save any of those drafts?
 9 A. No, sir.
 10 Q. Do you know David Harting?
 11 A. Yes.
 12 Q. Who is he?
 13 A. Dave is a former partner in the
 14 design firm Eleven from Boston.
 15 Q. And how do you know him?
 16 A. Through our work together in the
 17 area of student room housing, and of course
 18 through the development of the Trey chair.
 19 Q. Do you still work together?
 20 A. We have not, since -- no. I guess
 21 I'll leave it there. We have not.
 22 Q. When was the last time you worked
 23 together?
 24 A. We launched a derivation, if you
 25 will, of the Trey chair that is strictly a task

1 ANTHONY J. WARNCKE
 2 Q. Did you meet with anybody?
 3 A. I was here yesterday.
 4 Q. Who did you meet with?
 5 A. I traveled here at the same time
 6 that Mr. Bontrager and Mr. Harting did. I was
 7 here to meet with Mr. Young.
 8 Q. Did you meet with anyone other than
 9 Mr. Young?
 10 A. Yeah, the four of us were together.
 11 Q. So you, Mr. Young, Mr. Bontrager,
 12 and who else?
 13 A. Mr. Harting.
 14 Q. Anyone on the telephone?
 15 A. No.
 16 Q. And how long did you meet yesterday?
 17 A. Several hours.
 18 Q. All day or...
 19 A. No.
 20 Q. Did you review any materials in
 21 preparation for today?
 22 A. I've learned that lawyers' hours
 23 don't start at the beginning of the day, so
 24 "all day" is a relative term, I suppose.
 25 Q. Sure, fair enough. But a couple

1 ANTHONY J. WARNCKE
 2 hours, you said?
 3 A. Uh-huh.
 4 Q. And did you review any materials in
 5 preparation for your deposition?
 6 A. I had the chance to reread my
 7 declaration to Mr. Young to help refamiliarize
 8 myself with its contents.
 9 Q. Any other materials?
 10 A. Well, in the time since I've arrived
 11 here, I've read through all the prior art
 12 references in the petitioner's list there.
 13 I've of course read through my own declaration.
 14 I've reread the Patent Review Board's -- what
 15 is it? -- preliminary decision.
 16 Q. Anything else?
 17 A. Wall Street Journal.
 18 Q. But nothing else in preparation for
 19 today?
 20 A. Not that I recall, no.
 21 Q. On Page 3 of your declaration, about
 22 looks like four paragraphs down, you
 23 mentioned --
 24 A. I have line numbers. Would you like
 25 to reference those?

1 ANTHONY J. WARNCKE
 2 don't -- now that I think more deeply about it,
 3 no, I don't believe so.
 4 Q. Let's look at Page 5 of your
 5 declaration. Line 84 there's a sentence which
 6 reads:
 7 "After all the components necessary
 8 for the creation of a basic low-cost task
 9 chair-tilt/swivel mechanisms, height adjustable
 10 gas springs, five-star chair bases with
 11 casters, and even basic seat and back cushions
 12 were all available to chair manufacturers in
 13 the open marketplace from East Asian
 14 suppliers."
 15 Do you see that sentence?
 16 A. Yes, I do.
 17 Q. Is that generally referring to the
 18 features of Figure 2?
 19 A. Yes.
 20 Q. So prior to the efforts to design
 21 the Trey chair, it was known that low-cost task
 22 chairs had these features that are mentioned in
 23 that sentence. Is that correct?
 24 A. I believe that's what I've asserted
 25 in this declaration, yes.

1 ANTHONY J. WARNCKE
 2 Q. Yeah, sorry. So the paragraph
 3 beginning about Line 41.
 4 A. Uh-huh.
 5 Q. You're discussing a PlyLok family of
 6 chairs. What is that?
 7 A. It's exactly what's referenced in
 8 Exhibit 2047.
 9 Q. Is that an image, do you recall, or
 10 is that a description of what it is?
 11 A. It's what we call a self spec sheet,
 12 so it presents a statement of line, dimensions,
 13 features, selling points.
 14 Q. And what are they constructed of,
 15 those chairs?
 16 A. The frames are wood.
 17 Q. And those chairs are -- they do not
 18 have casters, is that correct, or wheels to
 19 move them?
 20 A. As a matter of a standard product
 21 offering, no.
 22 Q. Were they ever offered with those
 23 options?
 24 A. As a business, we often respond to
 25 special requests from customers, and -- no, I

1 ANTHONY J. WARNCKE
 2 Q. Let's move on to Page 8. Line 154
 3 there, you reference contract chairs. Could
 4 you provide a little more explanation of what a
 5 contract chair is?
 6 A. Contract, in my experience, is a
 7 term of the art or term of the industry, if you
 8 will. I would contrast it with residential
 9 furniture.
 10 Contract product is sold to
 11 professional buyers who may or may not be the
 12 direct users of the furniture. And I can't
 13 speak to the origins of the exact term, but
 14 those are the distinctions I make.
 15 Q. So this would be chairs sold
 16 pursuant to someone's contractual
 17 specifications. Is that right?
 18 A. Yes.
 19 Q. So, for example, things like
 20 warranty requirements or safety requirements,
 21 color, things like that, would be part of a
 22 contract chair deal?
 23 A. Part of --
 24 Q. So you're saying it's a contract
 25 chair, so presumably someone is contracting to

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