

Transcript of Carl G. Degen

Date: January 8, 2020 Case: American National Manufacturing Inc. -v- Sleep Number Corporation, et al. (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY



Transcript of Carl G. Degen Conducted on January 8, 2020

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2 2 2 2 4 3 3 2 2 2 4	1	UNITED STATES PATENT AND TRADEMARK OFFICE	1	APPEARANCES:	
2 2 2 2 4 3 3 2 2 2 4	2		2	On Behalf of Petitioner:	
A MERICAN INTION, MARFACTIONIN, DR., Patients		BEFORE THE PATENT TRIAL AND APPEAL BOARD	3	SPENCER FANE LLP	
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6 Fettiliner 0			5	By: Mark Thornhill, Esq.	
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Baint Owner 11 ALSO PRESENT Jacob Arvid, Videorapher Matthew Lynde (vid telephone) 11		SLEEP NUMBER CORPORATION	9	By: Elizabeth Patton, Esq.	
12 Case IPR010-6809, Part No. 8, 727,744 13 Case IPR010-6809, Part No. 8, 727,744 14 Case IPR010-6809, Part No. 8, 727,744 15 VIDEOLAPED DEPOSITION 16 OF 17 CARE IPR010-6809, Part No. 8, 727,744 18 OF 19 OR 14 January 8, 2020 15 VIDEOLAPED DEPOSITION 16 OF 17 CARE C. DEEDN 18 January 8, 2020 20 22 21 De No. 275013 22 24 24 1 INPCX: 25 FAMILATION PY: 26 1 INPCX: 27 YIDEOLAPED DEPOSITION OF CARL G. DEEEN, taken on 3 this Sth day of January, 2020, commencing at 4 Mart Theore IPT IPTITICATION: 5 Suite 2000, Minneepolis, Minneepoli	9	f/k/a SELECT COMFORT CORPORATION,	10		
11	10	Patent Owner		ALSO PRESENT: Jacob Arvold, Videographer Matthew Lynde (via telephone)	
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1 INDEX: 2 VIDEOTAPED DEPOSITION OF CARL G. DEGEN, taken on 2 3 this 8th day of January, 2020, commencing at 3 4 approximately 9:01 a.m., at the law offices of 5 5 Fox Rothschild, LLP, 222 South Ninth Street, 6 6 Suite 2000, Minneapolis, Minnesota. 7 7 8 Exhibit 2027					
2 VIDEOTAPED DEPOSITION OF CARL G. DEGEN, taken on 2 EXAMINATION BY: PAGE 3 this 8th day of January, 2020, commencing at 3 Mr. Thornhill		2			4
3 this 8th day of January, 2020, commencing at 3 Mr. Thornhill	1		1	INDEX:	
4 Approximately 9:01 a.m., at the law offices of 4 Ms. Patton 173 5 Fox Rothschild, LLP, 222 South Ninth Street, 5 EXHIBITS MARKED FOR IDENTIFICATION: 6 6 Suite 2000, Minneapolis, Minnesota. 7 Beclaration of George Edwards 66 8 9 No Bates 9 66 9 10 Suite 2000, Minneapolis, Minnesota. 61 9 11 2000, Minneapolis, Minnesota 61 9 66 9 10 Suite 2000, Minneapolis, Minnesota. 61 66 9 10 Suite 2000, Minneapolis, Minnesota. 66 7 11 2000, Minneapolis, Minnesota. 61 66 7 12 Suite 2000, Minneapolis, Minnesota. 7 8 66 13 Suite 2000, Minneapolis, Minnesota. 7 8 7 8 14 Suite 2000, Minneapolis, Minnesota. 7 8 7 8 7 8 7 8 7 8 7 8 7 8 7 8 7 8 7 8	2	VIDEOTAPED DEPOSITION OF CARL G. DEGEN, taken on	2	EXAMINATION BY: PAGE	
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5 Fox Rothschild, LLP, 222 South Ninth Street, 6 6 Suite 2000, Minneapolis, Minnesota. 6 7 8 8 7 8 8 8 9 66 9 10 8 10 11 9 12 20 10 13 12 24 hibit 2017 14 12 24 hibit 2017 15 14 15 16 17 19 18 20 20 21 20 21 22 21 22	4	approximately 9:01 a.m., at the law offices of	4	Ms. Patton173	
6 Suite 2000, Minneapolis, Minnesota. 6 Exhibit 2027	5	Fox Rothschild, LLP, 222 South Ninth Street,	5	EXHIBITS MARKED FOR IDENTIFICATION:	
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8 9 0			7	No Bates	
9 No Bates 9 No Bates 10 Exhibit 2030			Ľ	Declaration of George Edwards	
10 11 No Bates 11 12 Exhibit 2044					
11 12 Exhibit 2044				Declaration of Carl G. Degen	
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13 Exhibit 2052					
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1	PROCEEDINGS	1 Q. I'm Mark Thornhill representing
2		2 American National Manufacturing. It's a
3	THE VIDEOGRAPHER: Here begins	3 pleasure to meet you.
4	Disk Number 1 in the videotaped deposition	4 Sir, during the course of this
5	of Carl G. Degen in the matter of	5 deposition you understand that you're sworn
6	American National Manufacturing, Inc. vs.	6 to tell the truth, and you do understand
7	Sleep Number Corporation, before the	7 that, don't you?
8	Patent Trial and Appeal Board, United States	8 A. Yes.
9	Patent and Trademark Office, Case Numbers	9 Q. Okay. You've given many depositions in the
	IPR2019-00497, dash 00500 and dash 00514.	10 course of your career, haven't you, sir?
	Today's date is January 8th, 2020. The time	11 A. Yes.
	on the video monitor is 9:02 a.m.	
13	The videographer today is	12 Q. Okay. So I'm assuming that you're familiar
	Jacob Arvold representing Planet Depos.	13 with the process. The only thing that I ask
	This video deposition is taking place at	14 of you is that if I ask a question that you
	222 South Ninth Street, Suite 2000,	15 don't understand, please ask me to restate it
	Minneapolis, Minnesota.	16 or to clarify it, because otherwise I'm going
18	Would counsel please voice identify	17 to just accept that you do understand the
	themselves and state whom they represent.	18 question.
20	MR. THORNHILL: For	19 Is that fair?
	American National Manufacturing,	20 A. Yes.
22	Mark Thornhill of the Spencer Fane law firm.	21 Q. Good.
		22 MR. THORNHILL: So let's just mark
_	6	8
1	MS. PATTON: Elizabeth Patton from	1 Mr. Degen's declaration as Exhibit 2030.
2	Fox Rothschild representing the patent owner,	2 (Exhibit 2030 marked.)
3	Sleep Number Corporation.	3 BY MR. THORNHILL:
4	THE VIDEOGRAPHER: And also	4 Q. Mr. Degen, the court reporter has placed in
5	appearing by phone?	5 front of you Exhibit 2030. Can you identify
6	MR. THORNHILL: Is Matthew Lynde,	
7	L-Y-N-D-E, of Cornerstone Consulting.	6 that as the declaration that you submitted in
8	THE VIDEOGRAPHER: The court	7 this case dated October 23, 2019?
9	reporter today is Amy Larson representing	8 A. Yes, it appears to be a copy of that.
10	Planet Depos.	9 Q. Right. And that represents your sworn
11	Would the reporter please swear in	10 testimony as of that date; isn't that
12	the witness.	11 correct?
13		12 A. Yes.
		1213 105.
14	CARL G. DEGEN,	13 Q. In fact, the document has your signature at
14 15	CARL G. DEGEN, a witness in the above-entitled action,	
		13 Q. In fact, the document has your signature at
15	a witness in the above-entitled action,	13 Q. In fact, the document has your signature atthe last page of the text, isn't that so?
15 16	a witness in the above-entitled action, after having been first duly sworn, was	 13 Q. In fact, the document has your signature at 14 the last page of the text, isn't that so? 15 A. That's correct, on page 19. 16 Q. Right. And just above it says that you made
15 16 17	a witness in the above-entitled action, after having been first duly sworn, was	 13 Q. In fact, the document has your signature at 14 the last page of the text, isn't that so? 15 A. That's correct, on page 19. 16 Q. Right. And just above it says that you made 17 those statements under penalty of perjury?
15 16 17 18 19	a witness in the above-entitled action, after having been first duly sworn, was deposed and says as follows:	 13 Q. In fact, the document has your signature at 14 the last page of the text, isn't that so? 15 A. That's correct, on page 19. 16 Q. Right. And just above it says that you made 17 those statements under penalty of perjury? 18 A. Correct.
15 16 17 18 19	a witness in the above-entitled action, after having been first duly sworn, was deposed and says as follows: EXAMINATION	 13 Q. In fact, the document has your signature at 14 the last page of the text, isn't that so? 15 A. That's correct, on page 19. 16 Q. Right. And just above it says that you made 17 those statements under penalty of perjury? 18 A. Correct. 19 Q. Okay. And, sir, is it you understand that
15 16 17 18 19 20	a witness in the above-entitled action, after having been first duly sworn, was deposed and says as follows: EXAMINATION BY MR. THORNHILL: Q. Good morning, Mr. Degen.	 13 Q. In fact, the document has your signature at 14 the last page of the text, isn't that so? 15 A. That's correct, on page 19. 16 Q. Right. And just above it says that you made 17 those statements under penalty of perjury? 18 A. Correct. 19 Q. Okay. And, sir, is it you understand that 20 there actually are three proceedings with the
15 16 17 18 19 20 21	a witness in the above-entitled action, after having been first duly sworn, was deposed and says as follows: EXAMINATION BY MR. THORNHILL: Q. Good morning, Mr. Degen.	 13 Q. In fact, the document has your signature at 14 the last page of the text, isn't that so? 15 A. That's correct, on page 19. 16 Q. Right. And just above it says that you made 17 those statements under penalty of perjury? 18 A. Correct. 19 Q. Okay. And, sir, is it you understand that 20 there actually are three proceedings with the 21 same controversy in this matter?
15 16 17 18 19 20 21	a witness in the above-entitled action, after having been first duly sworn, was deposed and says as follows: EXAMINATION BY MR. THORNHILL: Q. Good morning, Mr. Degen. A. Good morning.	 13 Q. In fact, the document has your signature at 14 the last page of the text, isn't that so? 15 A. That's correct, on page 19. 16 Q. Right. And just above it says that you made 17 those statements under penalty of perjury? 18 A. Correct. 19 Q. Okay. And, sir, is it you understand that 20 there actually are three proceedings with the

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Transcript of Carl G. Degen Conducted on January 8, 2020

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9 1 Q. And this sworn testimony was submitted for	1 experience?
2 all three all three proceedings, you did	2 A. Correct.
3 not make a separate declaration for or a	3 Q. You've been a professional economist for how
4 different declaration for any of the three	4 many years approximately, 30, 40?
5 proceedings?	5 A. Forty-two.
· ·	6 Q. So is it okay with you then if we discuss
6 A. I believe for one of the proceedings some of	
7 the exhibit number references were changed,	
8 but the exhibits are exactly the same, and	
9 the text and opinions are exactly the same.	9 through the words about secondary indicia,
10 Q. Okay. The declaration, sir, Exhibit 2030,	10 et cetera?
11 includes a copy of your resume at Appendix A.	11 A. Yes.
12 Do you see that?	12 Q. Commercial success is a fair way to describe
13 A. Yes.	13 the basic analysis that you were conducting?
14 Q. And then immediately following the resume	14 A. It's – it's broader than the analysis I've
15 there's a page titled, Deposition and Trial	15 conducted. I've looked at two specific
16 Testimony.	16 analyses that fall under the rubric of
17 Do you see that?	17 commercial success.
18 A. Yes.	18 Q. Fine. And one of those is whether there is
19 Q. Is the resume still accurate as of today?	19 demand for the patented technologies; is that
20 A. Yes.	20 correct?
21 Q. Is the statement of deposition and trial	21 A. Yes.
22 testimony accurate as of today?	22 Q. And another and the second of those
10	12
1 A. Yes.	1 analyses that you've prepared that you've
2 Q. Sir, in this case and through your sworn	2 conducted, is the adoption rate of the
3 testimony presented in Exhibit 2030, you talk	3 patented technologies; is that correct?
4 about secondary indicia of nonobviousness, is	4 A. Yes.
5 that so?	5 Q. Now, sir, in cases previous to the case that
6 A. I think – yes, secondary indicia or	6 we're on here today, have you provided sworn
7 sometimes called secondary consideration,	7 testimony in other patent cases on the
8 yes.	8 general topic of commercial success?
9 Q. Okay. And in particular, you're talking here	9 A. Commercial success comes under several of the
10 about the concept of commercial success?	10 factors in Georgia-Pacific, so I would say in
11 A. Specifically, yes.	11 a in a large number of cases where I've
12 Q. And just for reference purposes, I was	12 given royalty opinions, commercial success,
13 looking at paragraph 8 of your declaration.	13 including demand and adoption, would have
14 That may be where you were looking.	14 been included in my analyses, or at least
15 A. Yes, it is.	15 considerations within my analyses.
16 Q. Okay. And you explain in paragraph 8,	16 Q. In any other patent cases have you opined
17 "Commercial success relates to economic	17 about demand for patented technology?
18 considerations regarding the products at	18 A. Yes, I've looked at the sales of products
19 issue"; is that correct?	19 embodying the patented technology relative to
20 A. I explain that that's my understanding, yes.	20 those that don't and how those have changed
21 Q. Okay. All right. And that's your	21 over time.
22 understanding developed during your years of	22 Q. How would you compare and contrast those
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Transcript of Carl G.	D	egen
Conducted on January	8.	2020

13	15
1 previous testimonies about demand for	1 been testimony that it's widespread or that
2 patented patented technologies from the	2 it's a hundred percent, so there was no need
3 undertaking that you have made in this case?	3 to do calculations.
4 A. I would say they're very similar.	4 Q. I see. And is that also so now I want to
5 Q. Have you opined in patent cases before about	5 move to the adoption rate issue.
6 adoption rate of patented technologies?	6 A. Yes.
7 A. Yes.	7 Q. And, again, I'm just asking because you used
8 Q. And were those also in the context of royalty	8 the word "considered," I'm trying to
9 cases?	9 understand what you really mean here.
10 A. Yes, I believe one of the Georgia-Pacific	10 So to be clear, what I'm asking is
11 factors directs me to consider the extent of	11 whether in any previous patent cases you have
12 use. And in a number of those cases I've	12 given sworn testimony regarding your
13 looked at how the accused technology was	13 calculations of adoption rates of patented
14 adopted throughout the product line.	14 technologies?
15 Q. And in those other cases, have you did	15 A. Yes. So I'm I'm a little confused. In
16 your sworn testimony include calculations of	16 terms of previous patent cases, I have
17 demand on units sold caused by the patented	17 testified in a previous IPR case involving
18 technologies?	18 patents that included explicit calculations
19 A. Yes.	19 of demand and adoption
20 Q. And did they include opinions and	20 Q. Okay.
21 calculations about the adoption rate of	21 A and other things.
22 patented technologies?	22 Beyond that, in cases involving a
14	16
14 1 A. I'm sure many of them have looked at the rate	1 reasonable royalty calculation, I have also
1 A. I'm sure many of them have looked at the rate 2 of adoption. I don't know whether I've	 reasonable royalty calculation, I have also calculated demand and adoption rates and
14 1 A. I'm sure many of them have looked at the rate 2 of adoption. I don't know whether I've 3 always calculated the calculated the	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more.
14 1 A. I'm sure many of them have looked at the rate 2 of adoption. I don't know whether I've 3 always calculated the calculated the 4 adoption rate in explicit percentage terms,	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case,
 A. I'm sure many of them have looked at the rate of adoption. I don't know whether I've always calculated the calculated the adoption rate in explicit percentage terms, but the how widespread it was over time, 	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case, okay?
 A. I'm sure many of them have looked at the rate of adoption. I don't know whether I've always calculated the calculated the adoption rate in explicit percentage terms, but the how widespread it was over time, how it changed over time was certainly 	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case, okay? 6 A. Okay.
14 1 A. I'm sure many of them have looked at the rate 2 of adoption. I don't know whether I've 3 always calculated the calculated the 4 adoption rate in explicit percentage terms, 5 but the how widespread it was over time, 6 how it changed over time was certainly 7 considered in many of the cases I've	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case, okay? A. Okay. Q. That would be a case then before the PTAB?
14 1 A. I'm sure many of them have looked at the rate 2 of adoption. I don't know whether I've 3 always calculated the calculated the 4 adoption rate in explicit percentage terms, 5 but the how widespread it was over time, 6 how it changed over time was certainly 7 considered in many of the cases I've 8 testified in.	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case, okay? A. Okay. Q. That would be a case then before the PTAB? 8 A. Yes.
 1 A. I'm sure many of them have looked at the rate of adoption. I don't know whether I've always calculated the calculated the adoption rate in explicit percentage terms, but the how widespread it was over time, how it changed over time was certainly considered in many of the cases I've testified in. Q. You are you used the word 	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case, okay? A. Okay. Q. That would be a case then before the PTAB? A. Yes. Q. Okay. And can you tell me the the parties
 1 A. I'm sure many of them have looked at the rate of adoption. I don't know whether I've always calculated the calculated the adoption rate in explicit percentage terms, but the how widespread it was over time, how it changed over time was certainly considered in many of the cases I've testified in. Q. You are you used the word "considered," and I just want to 	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case, okay? A. Okay. 7 Q. That would be a case then before the PTAB? 8 A. Yes. 9 Q. Okay. And can you tell me the the parties 10 to that case?
 1 A. I'm sure many of them have looked at the rate of adoption. I don't know whether I've 3 always calculated the calculated the 4 adoption rate in explicit percentage terms, 5 but the how widespread it was over time, 6 how it changed over time was certainly 7 considered in many of the cases I've 8 testified in. 9 Q. You are you used the word 10 "considered," and I just want to 11 A. Yeah. 	 reasonable royalty calculation, I have also calculated demand and adoption rates and considered them in many more. Q. Okay. Well, let's talk about the IPR case, okay? A. Okay. That would be a case then before the PTAB? A. Yes. Q. Okay. And can you tell me the the parties to that case? 11 A. Yes, it's the fourth case listed on the
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