

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

AMERICAN NATIONAL MANUFACTURING)	
INC.,)	
)	
Petitioner,)	
)	
vs.)	IPR2019-00497
)	Patent 8,769,747 B2
SLEEP NUMBER CORPORATION,)	IPR2019-00500
f/k/a SELECT COMFORT)	Patent 9,737,154 B2
CORPORATION,)	
)	
Patent Owner.)	
_____)	

DEPOSITION OF CRAIG MILLER

February 20, 2020

Corona, California

Reported by:

Michael G. McMorran

Job no: 27001

TransPerfect Legal Solutions

DEPOSITION OF CRAIG MILLER, taken on behalf of
Patent Owner at 9:01 a.m., Thursday, February 20th,
2020, at 2731 Blue Springs Drive, Corona, California,
before Michael G. McMorran, Certified Shorthand
Reporter No. 13735 of the State of California, RPR,
pursuant to Notice.

I N D E X
WITNESS: Craig Miller
EXAMINATION
By Mr. Hansen 5
By Mr. Elliott 109

E X H I B I T S
EX. DESCRIPTION PAGE
1 Document entitled "Agreement" 20
CONFIDENTIAL
2 Spreadsheet 24
3 Declaration of Craig Miller, Jr. in 31
Support of Petitioner's Reply to Patent
Owner's Response
4 Timeline diagram 50
5 Document entitled "Dires Advertising 67
Spend Periods 1-4" CONFIDENTIAL
6 Document entitled "Dires' Disapproval 76
Suspension Timeline - Private Search
Engine Companies"
7 IPR 10 Exhibit to Supplemental 89
Declaration of Craig Miller, Jr. in
Support of Petitioner's Reply to Patent
Owner's Response
8 IPR 11 Exhibit to Supplemental 93
Declaration of Craig Miller, Jr. in
Support of Petitioner's Reply to Patent
Owner's Response CONFIDENTIAL
9 American National Invoice No. 0491641-IN 114

APPEARANCES OF COUNSEL:
FOR PETITIONER:
SPENCER FANE, LLP
BY: KYLE L. ELLIOTT, ESQ.
1000 Walnut Street
Suite 1400
Kansas City, Missouri 64106-2140
(816) 292-8150
kelliott@spencerfane.com

FOR PATENT OWNER:

FOX ROTHSCHILD LLP
BY: ANDREW S. HANSEN, ESQ.
222 South Ninth Street
Suite 2000
Minneapolis, Minnesota 55402-3338
(612) 607-7000
ahansen@foxrothschild.com

Also present: LARRY ASKEW

CORONA, CALIFORNIA; THURSDAY, FEBRUARY 20TH, 2020
9:01 A.M.
* * *

CRAIG MILLER,
the Witness herein, having been first duly sworn,
testified as follows:

-oOo-

EXAMINATION

BY MR. HANSEN:

Q Good morning, Mr. Miller.
A Good morning.
Q As you know, my name is Andy Hansen. I'm
counsel for Sleep Number.
We've met before, correct?
A We have.
Q Let me ask you just some preliminary
background questions about preparation today and prior
testimony that you've given.
You've given depositions before, right?
A I have.
Q And you've given trial testimony before?
A I have.
Q Have you given any depositions or trial
testimony outside of the matters that you've had with
Sleep Number?

1 A Once.
 2 Q What was that?
 3 A It was in a -- on a medical bed application
 4 where it was a customer we were manufacturing products
 5 for, there was an exposure to latex.
 6 Q When did this occur?
 7 A Mid '90s.
 8 Q Okay. And can you describe your current role
 9 with American National Manufacturing?
 10 A I'm the president.
 11 Q How about with a company called Dires, LLC?
 12 A Manager.
 13 Q And what is your role with Sizewise?
 14 A I am the chief manufacturing innovation
 15 officer.
 16 Q How long have you held that position, the one
 17 with Sizewise?
 18 A That one changed maybe two years ago, if I
 19 remember correctly.
 20 Q Have you been involved with any other
 21 litigation besides litigation with Sleep Number?
 22 A Nothing that ever came to anything
 23 otherwise -- other than just resolving something.
 24 Q Like -- and it was kind of a little bit of a
 25 vague question, I think, so let me break it down a

1 little bit.
 2 With ANM in your role -- you've been the
 3 president of ANM for a while now, right?
 4 A I have.
 5 Q How long?
 6 A Since the -- I don't remember exactly when my
 7 mom was the president. I was the vice president
 8 starting in '93. And then sometime thereafter, don't
 9 know exactly when that changed, but I think it changed
 10 about the time that we merged with Sizewise.
 11 So probably 2007 would be my recollection.
 12 Q During your time as president of ANM, are you
 13 aware of ANM being involved in litigation with any
 14 other companies?
 15 A Not since -- no, I haven't.
 16 Q With any consumers?
 17 A With any -- not -- nothing that comes to my
 18 mind.
 19 Q And how about Dires? Same question.
 20 Set aside the Sleep Number litigations, have
 21 you been involved -- Dires -- have they been involved
 22 with any other litigation with any companies?
 23 MR. ELLIOTT: Objection to form.
 24 THE WITNESS: Not that I recall.
 25 /////

1 BY MR. HANSEN:
 2 Q With any consumers?
 3 A That was the question you asked.
 4 Not that I recall.
 5 Q Oh, I thought I said "companies," but --
 6 A Well, same answer.
 7 Q -- it covers both. Okay.
 8 And can you tell me a little bit about the
 9 relationship between ANM and Sizewise? What is the
 10 current relationship between the two companies?
 11 MR. ELLIOTT: I'll enter an objection as to
 12 scope. I realize we're doing a bit of background, but
 13 we don't want to turn into a -- something that's way
 14 beyond Mr. Miller's declaration in this IPR.
 15 THE WITNESS: So what was the question?
 16 BY MR. HANSEN:
 17 Q What is the relationship between ANM and
 18 Sizewise?
 19 A Well, Sizewise owns ANM.
 20 Q And the relationship between Sizewise and
 21 Dires?
 22 A Sizewise is the majority owner of Dires.
 23 Q And is ANM an owner of Dires?
 24 A ANM is not a direct owner of Dires.
 25 Q Is it -- is the ownership of Dires from ANM,

1 basically, through you?
 2 MR. ELLIOTT: Objection to form.
 3 THE WITNESS: I think it's -- I think we need
 4 to back up to help -- you know, put things -- to make
 5 things more clear.
 6 BY MR. HANSEN:
 7 Q Sure.
 8 A So American National is a wholly owned
 9 subsidiary of Dires -- I'm sorry. American National is
 10 a wholly owned subsidiary of Sizewise.
 11 Okay. And then Dires is majority owned, over
 12 80 percent owned -- was owned by Sizewise.
 13 Q And so who currently are the Dires owners?
 14 MR. ELLIOTT: Objection. Scope. That's way
 15 beyond anything we've got here.
 16 If we're going to continue to explore the
 17 corporate structure, you're going to have to give me
 18 some basis for why you think that's within the scope.
 19 MR. HANSEN: Well -- and I can tell you where
 20 it's going to come in later is questions about sales of
 21 products to Dires.
 22 So I'm trying to understand what the
 23 relationship is between ANM and Dires at this point, if
 24 they're separate entities or the same entity.
 25 MR. ELLIOTT: And how does that relate to the

<p style="text-align: right;">Page 10</p> <p>1 sales that we're going to get into later that I think 2 are relevant to the scope? 3 MR. HANSEN: Well, there's multiple ways we'll 4 get into it. We'll get into it with certain statements 5 that have been made about the relationship when you get 6 into false statements, which is within the scope of the 7 declarations that were given when we talk about false 8 statements from a previous litigation. 9 In addition, when we're talking about sales 10 from ANM to Dires, it's relevant as to whether or not 11 that is a direct to consumer or through a retailer, 12 which gets in, again, to statements that have been 13 made, which I'll ask questions about later. 14 MR. ELLIOTT: Well, we know Dires isn't a 15 consumer. So to me, you can -- I'm okay with that 16 question. 17 But why do you need to know the percentage 18 ownership and who else is owners of Dires, you know, 19 people that have never been mentioned in these IPRs? 20 MR. HANSEN: I don't think it really matters 21 if somebody has been mentioned in the IPR yet when I'm 22 asking questions about statements that have been made 23 in a declaration. 24 I'm just getting some background right now 25 about who is an owner of Dires, and I'm going to ask</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. ELLIOTT: Okay. 2 MR. HANSEN: That's all I'm looking for right 3 now. 4 MR. ELLIOTT: Okay. 5 BY MR. HANSEN: 6 Q I don't remember what the question was, but I 7 believe it was who are the owners of Dires? 8 A Okay. The owners of Dires -- the owners of 9 Dires are the seven owners of Sizewise. 10 Q Okay. 11 A Okay? Because there are seven owners of 12 Sizewise, and then there are three minority owners of 13 Dires. 14 But the owners of Sizewise own in excess of 15 80 percent of Dires. 16 Q And you're one of the owners of Sizewise? 17 A Correct. 18 Q And the other three minority owners are not 19 related to Sizewise? 20 A Correct. 21 Q Mr. Miller, in these IPRs, you've submitted 22 different declarations at different points in time. 23 Initially, you submitted a declaration relating to some 24 discovery requests that Sleep Number was pursuing. 25 Is that accurate?</p>
<p style="text-align: right;">Page 11</p> <p>1 questions about statements that have been made where 2 Dires is making sales to consumers where they're 3 attributing it to ANM as the manufacturer, Dires as the 4 manufacturer. 5 And I'm trying to understand if these 6 companies are separate or not. 7 MR. ELLIOTT: Let's move forward. But, you 8 know, to the extent we're trying to figure out what the 9 overall corporate structure of all this is in this 10 deposition now, I'm going to cut off, and we'll give a 11 call to the paralegal and see if we can get the Board 12 on the phone. 13 MR. HANSEN: So you don't want me to ask any 14 other questions about the ownership of Dires? 15 Are you saying he's not going to answer that, 16 or are you going to cut it off? 17 MR. ELLIOTT: I'm saying let's go forward with 18 your line of questioning. But what I'm saying is if 19 it's continuing to turn into just an exploration of the 20 whole ownership structure of individuals that aren't 21 even real parties of interest in this IPR, then I'm 22 going to cut it off. 23 MR. HANSEN: Okay. I don't think I'm going to 24 go where you're concerned I'm going. I just want to 25 get the framework for what the ownership is.</p>	<p style="text-align: right;">Page 13</p> <p>1 A Yes. 2 MR. ELLIOTT: And to the extent that you're 3 going to ask questions about that generally, but if 4 you're going to go into specifics of it, that's a 5 discovery motion that's already been decided. It's not 6 part of his testimony of substance in the IPR and would 7 also be beyond the scope of the testimony that's being 8 taken today. 9 MR. HANSEN: So you're saying that you 10 don't -- you wouldn't -- you would object to any 11 testimony relating to that prior declaration? 12 MR. ELLIOTT: Mmm-hmm, supporting the 13 discovery motion, yes. Some of that, I think, overlaps 14 with the declaration that's at issue substantively that 15 the testimony today pertains to -- that his direct 16 testimony pertains to. 17 MR. HANSEN: Well, I disagree with you that 18 it's not relevant because I think we still have some 19 carryover issues from discovery that are now at issue 20 with the latest declarations that were put in when we 21 sought discovery. 22 Obviously, you objected to a lot of the 23 discovery we sought. 24 MR. ELLIOTT: Right. 25 MR. HANSEN: It played out. There was an</p>

<p style="text-align: right;">Page 14</p> <p>1 order. And now we have a declaration in there that is 2 taking issue. 3 That's my characterization. You don't have to 4 agree with it. 5 MR. ELLIOTT: Sure. 6 MR. HANSEN: But it's taking issue with some 7 of the discovery that was produced, and there is 8 additional documents that have been now put forward in 9 the declaration that were not produced earlier when we 10 were seeking that discovery. 11 MR. ELLIOTT: Sure. And as to the discovery 12 that was ordered and then anything that's been produced 13 since then, I have no scope objections to that at all 14 because that is supporting Mr. Miller's testimony that 15 is in the declaration that's of substance here. 16 So those what you state there regarding the 17 discovery, I don't have issues with. 18 MR. HANSEN: All right. Well, Counsel, why 19 don't we put that aside for now? Just bear with me a 20 moment. 21 MR. ELLIOTT: Sure. 22 MR. HANSEN: And I'll see if that's something 23 that we're going to have to see if we can get on a call 24 about. 25 MR. ELLIOTT: Sure. Let me start tracking</p>	<p style="text-align: right;">Page 16</p> <p>1 A Products other than conventional bedding. 2 They started from waterbeds, and then they evolved into 3 things that were not mainstream. 4 Q So when you say -- when you say that, is it 5 like, basically, beds other than inner spring? 6 Is that a fair way to describe it? 7 MR. ELLIOTT: Objection to form. 8 THE WITNESS: They make futon. The shows we 9 attended was the specialty sleep shows. 10 BY MR. HANSEN: 11 Q Okay. 12 A And then it became the specialty sleep and 13 futon shows. That's why I'm saying it that way. 14 Q Okay. Did ANM -- you mentioned waterbeds. 15 Did ANM manufacture any other types of beds? This is 16 pre-entering that agreement with Sleep Number. 17 A Yes. 18 Q What types of beds were those? 19 A Prior to entering the agreement with 20 Sleep Number, we manufactured all types of, you know, 21 obviously, waterbeds, but also adjustable firmness 22 mattresses as well. 23 Q Adjustable firmness -- is that using air 24 technology? 25 A Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 down the paralegal's phone number. 2 BY MR. HANSEN: 3 Q Well, let me ask you some questions about 4 different companies that you have sold beds to in the 5 past. 6 A Okay. 7 Q By "you," I'm talking about ANM. Okay? Is 8 that fair? 9 A Fair. 10 Q At one point in time, you entered into a 11 consulting agreement with Sleep Number, right? 12 A Correct. 13 Q And what year was that? 14 A That was 2007, if I recall correctly. 15 Q So prior to that time, ANM was selling beds to 16 other retailers, right? 17 A Correct. 18 Q And what were those retailers? 19 A There was a number of retailers. There were 20 different retailers in the specialty sleep, you know, 21 market. Mostly companies that had transitioned from 22 selling waterbeds, which was our roots, our history, 23 that then transformed our companies into selling 24 specialty sleep products. 25 Q What do you mean by "specialty sleep"?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q Any other types of beds? 2 A Yeah. We would make other types of products 3 that were specialty in nature. 4 Q Can you give me some examples? 5 A Products that would go in motorhomes. Just we 6 were a specialty, you know, manufacturer; so we 7 manufactured a lot of custom, you know, mattresses to 8 go into truck drivers, you know, rigs. Just various 9 specialty, you know, products, including the medical 10 products. 11 Q And setting aside the medical products, these 12 specialty mattresses -- would they be all adjustable 13 air, or would some of them be different types of 14 mattresses? 15 A They would be different types. Some would be 16 air. 17 Q When you say "different types," would some of 18 them be inner spring? 19 A We've done some inner spring, but not very 20 much. 21 Q In your declaration that you submitted in -- 22 it's Exhibit 1057 in the IPR, and it's titled 23 "Declaration of Craig Miller, Jr. in Support of 24 Petitioner's Reply to Patent Owner Response," you talk 25 about different programmers that you've worked with</p>

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.