

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

AMERICAN NATIONAL MANUFACTURING, INC.

Petitioner,

v.

SLEEP NUMBER CORPORATION, f/k/a

SELECT COMFORT CORPORATION

Patent Owner.

Case IPR: IPR2019-00514
U.S. Patent 5,904,172

Case IPR: IPR2019-00497
U.S. Patent 8,769,747

Case IPR: IPR2019-00500
U.S. Patent 9,737,154

DEPOSITION OF MATTHEW R. LYNDE

February 18, 2020

Redwood Shores, California

REPORTED BY:

LYNNE M. LEDANOIS, CSR 6811

Job No: 27003

TransPerfect Legal Solutions

1 DEPOSITION OF MATTHEW R. LYNDE
 2 DATE: Tuesday, February 18, 2020
 3 TIME: 8:17 a.m.
 4 LOCATION: Lewis Roca Rothgerber Christie
 203 Redwood Shores Parkway
 Redwood Shores, California 94065

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 4 G1 Pump, etc., with years
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Redwood Shores, California
 Tuesday, February 18, 2020
 8:17 a.m.

MATTHEW R. LYNDE,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. LOFT:

Q Will you please state your name for the record?

A Matthew R. Lynde.

Q And Lynde? Kyle told us that and we've been working under that assumption but it's -- Lynde is how I would normally pronounce it.

A It's Lynde.

Q You've been deposed before?

A I have.

Q So you're generally aware of the deposition rules?

A I generally am, yes.

Q You'll need to give verbal answers, not a nod of the head.

Do you understand that?

A I do.

Q And we can take a break at any time. But I would ask that you answer any pending question before we do so.

A I understand.

Q And if there's any questions that I ask that you don't understand, you'll ask for clarification?

A I will.

Q Is there any reason that you're unable to provide truthful testimony under oath today?

A No.

Q There's no -- you don't have any medications -- not on any medications that would alter --

A No, I'm not.

Q And do you have any devices on you that would allow you to communicate with others?

A I've got my cell phone.

Q Okay. And that's -- anything else?

A No.

Q What did you do to prepare for today's deposition?

A I reviewed the declarations that have been filed by me and Mr. Miller and Mr. Degan, some of the supporting materials in those

declaration and I met with counsel.

Q What supporting materials did you review?

A There were referred to, especially in my declaration, supporting data in terms of advertising costs, for example. So I looked at the supporting documents in my declaration.

Q And those documents are specifically described in your declaration?

A Yes, they are.

Q Did you identify any documents not specifically described in your declaration?

A No, I don't think so. I reviewed the declaration.

Q Did you review any supplemental declarations submitted by yourself?

A By "declarations" I mean both the original declarations and the supplemental declarations.

Q Is that true of Mr. Lynde -- sorry, of Mr. Miller?

A Of Mr. Miller, yes.

Q And Mr. Degan?

A Correct.

Q Other than Mr. Elliott here today, did

1 you discuss your deposition with anyone?
 2 A Well, at the meeting with Mr. Elliott
 3 yesterday on the phone call was also two other
 4 counsel from Spencer Fane.
 5 Q And who were those counsel?
 6 A They were Mark Thornhill and Brian --
 7 I'm blanking on his name.
 8 Q Brian Bear?
 9 A Yes.
 10 Q Anyone else that you discussed your
 11 deposition -- did you discuss your deposition
 12 with anyone other than those three?
 13 A No. My staff were also in attendance
 14 at that meeting.
 15 Q And what were the names of the staff
 16 that were in attendance?
 17 A Ms. Liu and Mr. Rondeau.
 18 Q Anyone else?
 19 A No, that was it.
 20 Q Can you give me a quick overview of
 21 your education?
 22 A Yes. I have an undergraduate and
 23 Ph.D. doctorate in economics from the University
 24 of California at Berkeley.
 25 Q Okay. And when did you receive that?

1 A The Ph.D. was in '88 and the
 2 undergraduate degree in '79.
 3 Q And then after you got your Ph.D. from
 4 Berkeley, what did you do?
 5 A I was a professor at the City
 6 University of New York for five or six years.
 7 Q And what were you a professor of?
 8 A Economics.
 9 Q Okay. And then after that, what did
 10 you do?
 11 A After that I joined PriceWaterhouse,
 12 the international consultancy, and worked as an
 13 economist in that firm.
 14 Q And how long did you do that?
 15 A That was about nine years.
 16 Q So until 2000?
 17 A Until about 2000. I think it was 2001
 18 that I joined Cornerstone Research.
 19 Q And what is your role at Cornerstone
 20 Research?
 21 A I was the founder of the San Francisco
 22 office. I'm on a number of management
 23 committees. I'm the head of the intellectual
 24 property practice, and so I have general duties
 25 tease like that at the firm.

1 Q And what are the general duties as
 2 head of the intellectual practice?
 3 A I'm responsible for developing experts
 4 and developing methods and techniques and
 5 supporting experts in usually litigation
 6 assignments.
 7 Q Is your primary role working with
 8 intellectual property litigation?
 9 A That's my primary role, yes.
 10 Q What other duties do you have?
 11 A I'm on some of the marketing
 12 committees and one of the compensation
 13 committees. So generally administrative duties.
 14 Q Okay. Have you given testimony in
 15 other cases prior to this?
 16 A Yes.
 17 Q And are you generally -- do you
 18 generally -- "represent" is the wrong word.
 19 But are you generally employed by the
 20 patent owner or the challenger?
 21 A I've been employed by both types of
 22 parties over the years.
 23 Q Are the cases that you have testified
 24 in generally intellectual property cases?
 25 A Generally, yes.

1 Q What percentage of the cases that you
 2 worked on are IP?
 3 A Certainly the majority, but I don't
 4 know an exact percentage. I sometimes testify
 5 about other matters.
 6 Q More than 50 percent?
 7 A Yes, I'm sure that's true.
 8 Q More than 75 percent?
 9 A I really don't know.
 10 Q Okay. Has your testimony ever been
 11 subject to a motion to exclude?
 12 A I believe so, yes.
 13 Q Has any motion to exclude ever been
 14 granted?
 15 MR. ELLIOTT: Objection to form.
 16 THE WITNESS: Yes, I think there's a
 17 couple of occasions.
 18 BY MR. LOFT:
 19 Q On what occasions has your testimony
 20 been excluded?
 21 A Of what I'm aware, there was a case
 22 involving offshore production, offshore holding
 23 company for a patent. And there was a question
 24 as to whether the reason for the counterparty to
 25 change their sales practice was due to

1 competition from my client.

2 And so the evidence clearly showed
3 that, but the president who did not have access
4 to the information I had was of the view that
5 that was the case.

6 Since I never presumed, of course, to
7 read his mind, I was not offering any testimony
8 about his state of mind. But that was excluded.

9 Q What was the basis for exclusion?

10 A That I wouldn't -- well, it was
11 excluding something that I was not going to
12 testify and hadn't testified to. So it's kind
13 of a moot point.

14 Q Any other instances where your
15 testimony has been excluded?

16 A I think there may be one or two
17 others. I don't have a list in mind.

18 Q Do you remember the basis for the
19 exclusion in the one or two other?

20 A Well, these have never been about
21 qualifications. The one other I can remember at
22 the moment is a methodology question having to
23 do with the application to FRAND licensing.

24 Q So there was a question with the
25 methodology that you employed?

1 A Correct.

2 Q And what case was that?

3 A I'm going to have to refresh my memory
4 from my C.V. It was several years ago. I think
5 it was Metaswitch.

6 Q Metaswitch?

7 A Metaswitch, yes.

8 Q Any other instances where your
9 testimony has been excluded based upon the
10 methodology that you used?

11 A Not that I can recall.

12 Q In your declaration you relied on
13 discussions with Craig Miller; correct?

14 A I do.

15 Q How many discussions with Mr. Miller
16 did you have?

17 A Several. Maybe three or four.

18 Q When did you talk to Mr. Miller? When
19 were these conversations?

20 A These were over the several weeks
21 prior to my declarations.

22 Q What did you and Mr. Miller discuss?

23 A Well, we discussed his role, his
24 business, the company's history, the RF
25 technology, his history in the mattress aspect

1 of applying his technology.

2 The finances and sales, impacts on
3 sales, things like that.

4 Q And when you say RF technology, what
5 do you mean by that?

6 A I understand that one of the
7 technologies that he has at ANM has to do with
8 radio-frequency welding of thermoplastics, for
9 example.

10 Q Okay. Is it your understanding that
11 that technology is at issue in this case?

12 A It is not.

13 Q Did Mr. Miller provide any documents
14 to you during these conversations?

15 A He did not. He did supply some
16 documents to counsel.

17 Q Okay. And are you aware as to whether
18 or not those documents were produced?

19 A I'm not personally aware. I
20 understand the ones that were provided to me by
21 counsel were produced because I referred to them
22 in my declaration.

23 Q And you also had -- is there anything
24 else that you and Mr. Miller discussed?

25 MR. ELLIOTT: Objection, could call

1 into privilege areas about discussions with
2 counsel. But you're certainly permitted to
3 discuss anything you relied on as a basis
4 and is not an attorney-client communication.

5 THE WITNESS: No, those were the main
6 things we talked about was the business and
7 the sales.

8 BY MR. LOFT:

9 Q Okay. In discussing the impact -- you
10 mentioned that you and Mr. Miller discussed
11 sales and the impact on sales; correct?

12 A Yes.

13 Q When discussing that, did you rely on
14 what Mr. Miller stated impacted sales?

15 A In part, yes, I did. But I also
16 looked at all of the objective data that was
17 provided to me about sales and sales trends.

18 Q And what was the objective data that
19 was provided to you about sales and sales
20 trends?

21 A There were unit sales records that
22 Mr. Degan also relied on. There were
23 advertising expenditures. There were the
24 specifics with respect to Google Ad words.

25 So I looked at all of that data in

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