

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

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

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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

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<p>1 you discuss your deposition with anyone?</p> <p>2 A Well, at the meeting with Mr. Elliott</p> <p>3 yesterday on the phone call was also two other</p> <p>4 counsel from Spencer Fane.</p> <p>5 Q And who were those counsel?</p> <p>6 A They were Mark Thornhill and Brian --</p> <p>7 I'm blanking on his name.</p> <p>8 Q Brian Bear?</p> <p>9 A Yes.</p> <p>10 Q Anyone else that you discussed your</p> <p>11 deposition -- did you discuss your deposition</p> <p>12 with anyone other than those three?</p> <p>13 A No. My staff were also in attendance</p> <p>14 at that meeting.</p> <p>15 Q And what were the names of the staff</p> <p>16 that were in attendance?</p> <p>17 A Ms. Liu and Mr. Rondeau.</p> <p>18 Q Anyone else?</p> <p>19 A No, that was it.</p> <p>20 Q Can you give me a quick overview of</p> <p>21 your education?</p> <p>22 A Yes. I have an undergraduate and</p> <p>23 Ph.D. doctorate in economics from the University</p> <p>24 of California at Berkeley.</p> <p>25 Q Okay. And when did you receive that?</p>	<p>1 Q And what are the general duties as</p> <p>2 head of the intellectual practice?</p> <p>3 A I'm responsible for developing experts</p> <p>4 and developing methods and techniques and</p> <p>5 supporting experts in usually litigation</p> <p>6 assignments.</p> <p>7 Q Is your primary role working with</p> <p>8 intellectual property litigation?</p> <p>9 A That's my primary role, yes.</p> <p>10 Q What other duties do you have?</p> <p>11 A I'm on some of the marketing</p> <p>12 committees and one of the compensation</p> <p>13 committees. So generally administrative duties.</p> <p>14 Q Okay. Have you given testimony in</p> <p>15 other cases prior to this?</p> <p>16 A Yes.</p> <p>17 Q And are you generally -- do you</p> <p>18 generally -- "represent" is the wrong word.</p> <p>19 But are you generally employed by the</p> <p>20 patent owner or the challenger?</p> <p>21 A I've been employed by both types of</p> <p>22 parties over the years.</p> <p>23 Q Are the cases that you have testified</p> <p>24 in generally intellectual property cases?</p> <p>25 A Generally, yes.</p>
Page 11	Page 13
<p>1 A The Ph.D. was in '88 and the</p> <p>2 undergraduate degree in '79.</p> <p>3 Q And then after you got your Ph.D. from</p> <p>4 Berkeley, what did you do?</p> <p>5 A I was a professor at the City</p> <p>6 University of New York for five or six years.</p> <p>7 Q And what were you a professor of?</p> <p>8 A Economics.</p> <p>9 Q Okay. And then after that, what did</p> <p>10 you do?</p> <p>11 A After that I joined PriceWaterhouse,</p> <p>12 the international consultancy, and worked as an</p> <p>13 economist in that firm.</p> <p>14 Q And how long did you do that?</p> <p>15 A That was about nine years.</p> <p>16 Q So until 2000?</p> <p>17 A Until about 2000. I think it was 2001</p> <p>18 that I joined Cornerstone Research.</p> <p>19 Q And what is your role at Cornerstone</p> <p>20 Research?</p> <p>21 A I was the founder of the San Francisco</p> <p>22 office. I'm on a number of management</p> <p>23 committees. I'm the head of the intellectual</p> <p>24 property practice, and so I have general duties</p> <p>25 tease like that at the firm.</p>	<p>1 Q What percentage of the cases that you</p> <p>2 worked on are IP?</p> <p>3 A Certainly the majority, but I don't</p> <p>4 know an exact percentage. I sometimes testify</p> <p>5 about other matters.</p> <p>6 Q More than 50 percent?</p> <p>7 A Yes, I'm sure that's true.</p> <p>8 Q More than 75 percent?</p> <p>9 A I really don't know.</p> <p>10 Q Okay. Has your testimony ever been</p> <p>11 subject to a motion to exclude?</p> <p>12 A I believe so, yes.</p> <p>13 Q Has any motion to exclude ever been</p> <p>14 granted?</p> <p>15 MR. ELLIOTT: Objection to form.</p> <p>16 THE WITNESS: Yes, I think there's a</p> <p>17 couple of occasions.</p> <p>18 BY MR. LOFT:</p> <p>19 Q On what occasions has your testimony</p> <p>20 been excluded?</p> <p>21 A Of what I'm aware, there was a case</p> <p>22 involving offshore production, offshore holding</p> <p>23 company for a patent. And there was a question</p> <p>24 as to whether the reason for the counterparty to</p> <p>25 change their sales practice was due to</p>

<p style="text-align: right;">Page 14</p> <p>1 competition from my client.</p> <p>2 And so the evidence clearly showed</p> <p>3 that, but the president who did not have access</p> <p>4 to the information I had was of the view that</p> <p>5 that was the case.</p> <p>6 Since I never presumed, of course, to</p> <p>7 read his mind, I was not offering any testimony</p> <p>8 about his state of mind. But that was excluded.</p> <p>9 Q What was the basis for exclusion?</p> <p>10 A That I wouldn't -- well, it was</p> <p>11 excluding something that I was not going to</p> <p>12 testify and hadn't testified to. So it's kind</p> <p>13 of a moot point.</p> <p>14 Q Any other instances where your</p> <p>15 testimony has been excluded?</p> <p>16 A I think there may be one or two</p> <p>17 others. I don't have a list in mind.</p> <p>18 Q Do you remember the basis for the</p> <p>19 exclusion in the one or two other?</p> <p>20 A Well, these have never been about</p> <p>21 qualifications. The one other I can remember at</p> <p>22 the moment is a methodology question having to</p> <p>23 do with the application to FRAND licensing.</p> <p>24 Q So there was a question with the</p> <p>25 methodology that you employed?</p>	<p style="text-align: right;">Page 16</p> <p>1 of applying his technology.</p> <p>2 The finances and sales, impacts on</p> <p>3 sales, things like that.</p> <p>4 Q And when you say RF technology, what</p> <p>5 do you mean by that?</p> <p>6 A I understand that one of the</p> <p>7 technologies that he has at ANM has to do with</p> <p>8 radio-frequency welding of thermoplastics, for</p> <p>9 example.</p> <p>10 Q Okay. Is it your understanding that</p> <p>11 that technology is at issue in this case?</p> <p>12 A It is not.</p> <p>13 Q Did Mr. Miller provide any documents</p> <p>14 to you during these conversations?</p> <p>15 A He did not. He did supply some</p> <p>16 documents to counsel.</p> <p>17 Q Okay. And are you aware as to whether</p> <p>18 or not those documents were produced?</p> <p>19 A I'm not personally aware. I</p> <p>20 understand the ones that were provided to me by</p> <p>21 counsel were produced because I referred to them</p> <p>22 in my declaration.</p> <p>23 Q And you also had -- is there anything</p> <p>24 else that you and Mr. Miller discussed?</p> <p>25 MR. ELLIOTT: Objection, could call</p>
<p style="text-align: right;">Page 15</p> <p>1 A Correct.</p> <p>2 Q And what case was that?</p> <p>3 A I'm going to have to refresh my memory</p> <p>4 from my C.V. It was several years ago. I think</p> <p>5 it was Metaswitch.</p> <p>6 Q Metaswitch?</p> <p>7 A Metaswitch, yes.</p> <p>8 Q Any other instances where your</p> <p>9 testimony has been excluded based upon the</p> <p>10 methodology that you used?</p> <p>11 A Not that I can recall.</p> <p>12 Q In your declaration you relied on</p> <p>13 discussions with Craig Miller; correct?</p> <p>14 A I do.</p> <p>15 Q How many discussions with Mr. Miller</p> <p>16 did you have?</p> <p>17 A Several. Maybe three or four.</p> <p>18 Q When did you talk to Mr. Miller? When</p> <p>19 were these conversations?</p> <p>20 A These were over the several weeks</p> <p>21 prior to my declarations.</p> <p>22 Q What did you and Mr. Miller discuss?</p> <p>23 A Well, we discussed his role, his</p> <p>24 business, the company's history, the RF</p> <p>25 technology, his history in the mattress aspect</p>	<p style="text-align: right;">Page 17</p> <p>1 into privilege areas about discussions with</p> <p>2 counsel. But you're certainly permitted to</p> <p>3 discuss anything you relied on as a basis</p> <p>4 and is not an attorney-client communication.</p> <p>5 THE WITNESS: No, those were the main</p> <p>6 things we talked about was the business and</p> <p>7 the sales.</p> <p>8 BY MR. LOFT:</p> <p>9 Q Okay. In discussing the impact -- you</p> <p>10 mentioned that you and Mr. Miller discussed</p> <p>11 sales and the impact on sales; correct?</p> <p>12 A Yes.</p> <p>13 Q When discussing that, did you rely on</p> <p>14 what Mr. Miller stated impacted sales?</p> <p>15 A In part, yes, I did. But I also</p> <p>16 looked at all of the objective data that was</p> <p>17 provided to me about sales and sales trends.</p> <p>18 Q And what was the objective data that</p> <p>19 was provided to you about sales and sales</p> <p>20 trends?</p> <p>21 A There were unit sales records that</p> <p>22 Mr. Degan also relied on. There were</p> <p>23 advertising expenditures. There were the</p> <p>24 specifics with respect to Google Ad words.</p> <p>25 So I looked at all of that data in</p>

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