UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN NATIONAL MANUFACTURING INC.,

Petitioner,

v.

SLEEP NUMBER CORPORATION, f/k/a SELECT COMFORT CORPORATION,

Patent Owner.

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Cases

IPR2019-00497 (Patent 8,769,747 B2)

IPR2019-00500 (Patent 9,737,154 B2)

DEPOSITION of DR. JOSHUA PHINNEY

September 24, 2019

New York, New York

Reported by:

Joseph Danyo V

Job no: 26065



	Dago 2		Page 4
	Page 2		Page 4
1	DEPOSITION of DR. JOSHUA PHINNEY, pursuant	1	J. PHINNEY
2	to Notice, held at the offices of Fox Rothschild,	2	DR. JOSHUA PHINNEY,
3	LLP, 101 Park Avenue, 17th Floor, New York, New	3	the Witness herein, having first been
4	York, on September 24, 2019, at 9:00 a.m., before	4	duly sworn by the Notary Public, was
5	Joseph Danyo V, a Shorthand Reporter and Notary	5	examined and testified as follows:
6	Public for the State of New York.	6	MR. MOORE: Steve Moore for Sleep
7		7	Number Corporation from Pillsbury
8		8	Winthrop, and with me is Luke Toft from
9		9	Fox Rothschild.
10		10	MR. TUTTLE: Kevin Tuttle from the
11		11	law firm of Spencer Fane LLP in Kansas
12		12	City, Missouri, for petitioners, American
13		13	National Manufacturing, and I'm here with
14		14	my colleague, Kyle Elliott, of Spencer
15		15	Fane in Kansas City, Missouri.
16		16	EXAMINATION
17		17	BY MR. MOORE:
18		18	Q. Good morning, Dr. Phinney.
19		19	A. Good morning.
20		20	(Whereupon, Phinney Exhibit 1,
21		21	declaration in support the party's review
22		22	of U.S. Patent 9737154 was hereby marked
23		23	for identification, as of this date.)
24		24	Q. Dr. Phinney, have you seen this
25		25	document before?
	Page 3		Page 5
1		1	J. PHINNEY
2	APPEARANCES:	2	A. Yes.
3 4	SPENCER FANE LLP	3	Q. What is this document?
5	Attorneys for Petitioner	4	A. This is my declaration in support of
6	1000 Walnut Street, Suite 1400	5	the party's review of U.S. Patent 9737154.
7	Kansas City, Missouri 64106	6	Q. Did you prepare this document?
8	BY: KYLE L. ELLIOTT, ESQ.	7	A. Yes.
9	kelliott@spencerfane.com	8	Q. Just take a look at the introduction
	KEVIN S. TUTTLE, ESQ.	9	that begins on page 1 of this document.
10	ktuttle@spencerfane.com	10	A. I'm there.
11		11	Q. So you're here as an expert witness;
12	PILLSBURY WINTHROP SHAW PITTMAN LLP	12	are you not?
13 14	Attorneys for Patent Owner 501 West Broadway, Suite 1100	13	A. Yes.
15	San Diego, California 92101	14	Q. Paragraph 1 states you're a principal
16	BY: STEVEN A. MOORE, JD, Ph.D.	15	engineer at Exponent?
	steve.moore@pillsburylaw.com	16	A. Yes.
17	AND	17	Q. What is Exponent?
18	-AND-	18	A. Exponent is a scientific and
19	FOX ROTHSCHILD LLP	19	engineering consulting firm. We have
20	222 South Ninth Street, Suite 2000	20	approximately a thousand employees, but we assist
21	Minneapolis, Minnesota 55402	21	clients with different kinds of technical
22	BY: LUKE D. TOFT, ESQ.	22	problems that they have.
23	ltoft@foxrothschild.com	23	Q. What percentage of your work is
24		24	legal?
25	* * *	25	A. I'd say about 50 percent.

2 (Pages 2 to 5)



J. PHINNEY O. 50? A. Yes. Q. And the other 50 percent is of what nature? A. It's engineering work, particularly helping clients understand the cause of failure of their products or assisting them with calculating things like electromagnetic. Q. What percentage of your current work is related to fluid dynamics? A. I'd say just this litigation, so right now maybe 10 percent. A. I'm going to guess it was about 250. A. I'm going to guess it was about 250. Q. Which years did that work happen? A. I recall I was definitely working on this or the related district court matter one year ago, approximately, so October 2018. Q. Any other work that you're currently doing in pneumatic systems Day O. Looking at your qualifications on page 2 of this document, it says you worked on the Laser Interferometric Gravitational Wave Observatory. What specifically was your work J. PHINNEY Q. Your work was related to the control of the pneumatic system and a hydraulic system. The main working fluid for the actuators, which are these actuators around the experiment that would move the experiment for the working fluids there was this mineral oil, so that was a hydraulic system. The main working fluid for the actuators, which are these actuators around the experiment that would move the experiment for the working fluids there was this mineral oil, so that was a hydraulic system. The main working fluid for the actuators, which are these actuators around the experiment that would move the experiment for the working fluids there was this mineral oil, so that was a hydraulic system. The main working fluid for the actuators, which are these actuators around the experiment that would move the experiment that would move the experiment for the working fluids there was this mineral oil, so that was a hydraulic system. The main working fluid tor the actuators, which are these actuators around the experiment that would move the experiment that would move the experiment that would move the experiment that would mov
2 Q. So? 3 A. Yes. 4 Q. And the other 50 percent is of what 5 nature? 6 A. It's engineering work, particularly helping clients understand the cause of failure of their products or assisting them with calculating things like electromagnetic. 0 Q. What percentage of your current work 11 is related to fluid dynamics? 12 A. I'd say just this litigation, so 13 right now maybe 10 percent. 14 Q. Ten percent. 15 A. I'm going to guess it was about 250. 16 A. I'm going to guess it was about 250. 17 Q. Was all that in 2019? 18 A. No. 19 Q. Which years did that work happen? 20 A. I recall I was definitely working on this or the related district court matter one year ago, approximately, so October 2018. 21 Q. Any other work that you're currently doing in pneumatic systems A. No. 22 Q. Cor measurement of blood pressure? 23 A. No. 24 Q. Looking at your qualifications on page 2 of this document, it says you worked 24 Observatory. 25 What specifically was your work 26 What specifically was your work 27 Observatory. 28 What specifically was your work 29 A. I wouldn't say that it had a general relationship to that, no. Q. Did it have any relation to that was a hydraulic system. The main working fluid for the actuators, which are these actuators, which are actuators, which are these actuators, which are actuators, which are actuators, which are these actuators, which are actuators, which are actuators, which are these actuators, which are actuators, w
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4 A. It involved a pneumatic system and a hydraulic system. The main working fluid for the actuators, which are these actuators around the capperiment that would move the experiment for the working fluids there was this mineral oil, so that was a hydraulic system, but it also included a pneumatic component, because one way I created a source of pressurized hydraulic fluid for the actuators, which are these actuators around the experiment that would move the experiment for the working fluids there was this mineral oil, so that was a hydraulic system, but it also included a pneumatic component, because one way I created a source of pressurized hydraulic fluid for the experiment was with a pneumatic control system and a pressurized system. The main working fluid for the actuators, which are these actuators around the experiment that would move the experiment for the working fluids there was this mineral oil, so that was a hydraulic system, but it also included a pneumatic component, because one way I created a source of pressurized hydraulic fluid for the actuators, which are these actuators around the experiment that would move the experiment of the working fluids there was this mineral oil, so that was a hydraulic system, but it also included a pneumatic component, because one way I created a source of pressurized hydraulic fluid for the actuators, which are these actuators, which are these actuators which are these actuators which are these actuators, which are these actuators which are these actuators which are these actuators which are these actuators which are these actuators, which are these actuators, which are these actuators, which are these actuators which are these actuators, which are these actuators which are these actuators which are the working fluids there was this mineral oil, so that was a hydraulic system. The working fluids there was this mineral oil, so that was a hydraulic
5 nature? 6 A. It's engineering work, particularly 7 helping clients understand the cause of failure 8 of their products or assisting them with 9 calculating things like electromagnetic. 10 Q. What percentage of your current work 11 is related to fluid dynamics? 12 A. I'd say just this litigation, so 13 right now maybe 10 percent. 14 Q. Ten percent. About how many hours 15 have you worked on this litigation? 16 A. I'm going to guess it was about 250. 17 Q. Was all that in 2019? 18 A. No. 19 Q. Which years did that work happen? 20 A. I recall I was definitely working 21 on this or the related district court matter one 22 year ago, approximately, so October 2018. 23 Q. Any other work that you're currently 24 doing in pneumatic systems 25 A. No. 26 Page 7 27 28 J. PHINNEY 29 Q or hydraulics? 30 A. No. 41 Q. Looking at your qualifications on 51 page 2 of this document, it says you work 81 What specifically was your work 82 What specifically was your work 83 What specifically was your work 84 What specifically was your work 85 have related to fluid for the actuators, which are these actuators around the experiment for 4 the working fluids there was this mineral oil, so 4 that was a hydraulic system, but it also included 4 a pneumatic component, because one way I created 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized hydraulic fluid for the 4 a source of pressurized volume of TRINYTE (phonetic). 4 D. Did that have any relation to trucking, 5 generally? A. I wouldn't say that it had a
6 A. It's engineering work, particularly 7 helping clients understand the cause of failure 8 of their products or assisting them with 9 calculating things like electromagnetic. 10 Q. What percentage of your current work 11 is related to fluid dynamics? 12 A. I'd say just this litigation, so 13 right now maybe 10 percent. 14 Q. Ten percent. About how many hours 15 have you worked on this litigation? 16 A. I'm going to guess it was about 250. 17 Q. Was all that in 2019? 18 A. No. 19 Q. Which years did that work happen? 20 A. I recall I was definitely working 21 on this or the related district court matter one 22 year ago, approximately, so October 2018. 23 Q. Any other work that you're currently 24 doing in pneumatic systems 25 A. No. Page 7 Page 7 1 J. PHINNEY 2 Q or hydraulics? 3 A. No. 25 Q. Did it have any relation to trucking, 26 G. Pid it have any relation to trucking, 27 Obervatory. 3 A. No. 4 Q. Doid it have any relation to trucking, 4 Q. Did it have any relation to trucking, 5 biomedical devices? 4 A. I'd say, no. Q. Or measurement of blood pressure? Page 9 1 J. PHINNEY 2 Q or hydraulics? 3 A. No. 4 Q. Looking at your qualifications on 5 page 2 of this document, it says you worked on 6 the Laser Interferometric Gravitational Wave 7 Observatory. 8 What specifically was your work 8 What specifically was your work 6 actuators, which are these actuators around the experiment that would move the experiment that would move the experiment that would move the experiment, so this this there was this mineral oil, so that was a hydraulic system, but it also included a pneumatic component, because one way I created a source of pressurized volume of TRINYTE (phonetic). Q. Did it have any relation to trucking, generally? A. I wouldn't say that it had a general relationship to that, no. Q. Did it have any relation to inflation to i
7 helping clients understand the cause of failure of their products or assisting them with of their products or assisting them with a calculating things like electromagnetic. 10 Q. What percentage of your current work is related to fluid dynamics?
8 of their products or assisting them with 9 calculating things like electromagnetic. 10 Q. What percentage of your current work 11 is related to fluid dynamics? 12 A. I'd say just this litigation, so 13 right now maybe 10 percent. 14 Q. Ten percent. About how many hours 15 have you worked on this litigation? 16 A. I'm going to guess it was about 250. 17 Q. Was all that in 2019? 18 A. No. 19 Q. Which years did that work happen? 20 A. I recall I was definitely working 21 on this or the related district court matter one 22 year ago, approximately, so October 2018. 23 Q. Any other work that you're currently 24 doing in pneumatic systems 25 A. No. Page 7 1 J. PHINNEY 2 Q or hydraulies? 3 A. No. Page 2 of this document, it says you worked on 6 the Laser Interferometric Gravitational Wave 7 Observatory. 8 What percentage of your current work 10 a pneumatic system, but it also included a pneumatic component, because one way I created a source of pressurized hydraulic fluid for the experiment was with a pneumatic control system and a pressurized volume of TRINYTE (phonetic). 4 Q. Did that have any relation to traffic safety. A. That was not related to traffic safety. A. I wouldn't say that it had a general relationship to that, no. Q. Did it have any relation to biomedical devices? A. I'd say, no. Q. Or measurement of blood pressure? Page 9 1 J. PHINNEY 2 A. No. 3 A. No. 4 Q. Looking at your qualifications on 5 page 2 of this document, it says you worked on 6 the Laser Interferometric Gravitational Wave 7 Observatory. 8 What specifically was your work 8 What specifically was your work 8 What specifically was your work 9 that was a hydraulic system, but it also included a source of pressurized hydraulic fluid for the experiment was with a pneumatic control system and a pressurized volume of TRINYTE (phonetic). Q. Did it have any relation to biomedical devices? A. I'd say, no. Q. Did it have any relation to inflatable beds? A. I would say for all of these where I'm answering, no, this is a it's not a
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21 on this or the related district court matter one 22 year ago, approximately, so October 2018. 23 Q. Any other work that you're currently 24 doing in pneumatic systems 25 A. No. 26 Page 7 1 J. PHINNEY 2 Q or hydraulics? 3 A. No. 27 Page 9 28 A. No. 29 Page 9 20 J. PHINNEY 2 Q or hydraulics? 3 A. No. 3 Q. Did it have any relation to biomedical devices? 4 A. I'd say, no. 25 Q. Or measurement of blood pressure? 26 Page 9 27 Page 9 28 A. No. 9 Did it have any relation to inflatable beds? 9 A. No. 1 J. PHINNEY 1 J. PHINNEY 2 A. No. 2 A. No. 3 Q. Did it have any relation to inflatable beds? 5 A. I would say for all of these where inflatable beds? 6 I'm answering, no, this is a it's not a relation to a scientific experiment, so it's a physics experiment, ultimately.
Q. Any other work that you're currently doing in pneumatic systems A. No. Page 7 Dage 9 1 J. PHINNEY Q or hydraulics? A. No. Q. Looking at your qualifications on page 2 of this document, it says you worked on the Laser Interferometric Gravitational Wave Observatory. What specifically was your work Diomedical devices? A. I'd say, no. J. PHINNEY A. I'd say, no. J. PHINNEY A. No. Did it have any relation to inflatable beds? A. I would say for all of these where I'm answering, no, this is a it's not a cientific experiment, so it's a physics experiment, ultimately.
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7 Observatory. 7 scientific experiment, so it's a physics 8 What specifically was your work 8 experiment, ultimately.
9 related to in that experiment? 9 So apart from the principles of the
A. So I had worked on the hydraulic pneumatic and the hydraulic and fluid control
power supply for the experiment in order to 11 systems, I don't think there is a relationship.
handle the outer stage isolation of the 2 Q. Thank you. Dr. Phinney, in paragraph
experiment, which was itself in a vacuum. 13 11, you list a number of cases and legal matters
Q. Outer stage isolation, could you 14 in which you were involved. Is this a complete
explain that a little more? 15 list of your engagements in the legal
16 A. Yes. This is an experiment that is 16 environment?
designed to be in an inertial frame of reference, 17 A. No. I think this would be the cases
and that means it needs to reject movements of 18 in which I offered testimony at the time when I
19 the earth with respect to an inertial frame. 19 submitted this report.
So, for instance, seismic, the Q. Dr. Phinney, has a court ever found
motions of the earth need to be detected, and if 21 your testimony to be unreliable?
they go left, the experiment needs to push right 22 A. I don't believe so.
23 to counteract them and sort of remain in what I'm 23 Q. Dr. Phinney, have you ever made a



	Page 10		Page 12
1	J. PHINNEY	1	J. PHINNEY
2	that. You know, I have had typos, but I'm not	2	Q. Was this during your PhD?
3	aware of a mistake in any report.	3	A. Yes. That's fair. It was after I
4	Q. Were any of these cases related to	4	got my master's, but before I got my PhD.
5	pneumatic systems?	5	Q. Dr. Phinney, what was your
6	A. The number N there, the	6	dissertation topic?
7	Westinghouse air brake case, that was related to	7	A. It was for the PhD?
8		8	Q. Um-hum.
9	air brakes for trains, which is a pneumatic	9	`
	system.	1	A. It related to power electronics.
10 11	Q. Would you say that that's related to	10	Q. So your work in the LIGO experiment
	transportation safety?	11 12	didn't relate to your research at MIT for your
12	A. Yes. I think that's a fair		PhD?
13	characterization, but that's	13	A. That is correct. One thing, I'm
14	Q. Thank you.	14	sorry, if I can clarify, you asked what my PhD
15	A. Not just that, but I think that's	15	was about. My PhD also included some aspects of
16	part of it that's related to.	16	electric mechanical conversion.
17	Q. Is it related to trucking?	17	Q. Thank you. While you were working on
18	A. I give the same sort of answer that I	18	the LIGO experiment, how much of your time was
19	gave previously. Not it's not really, apart	19	spent in your research at MIT versus how much of
20	from the principles of the operation in a	20	your time was spent working on the hydraulics and
21	pneumatic control system, for instance.	21	pneumatics of the LIGO experiment?
22	Q. Is it related to measurement of blood	22	A. It was all LIGO. For that time, I
23	pressure?	23	was working on that constantly, apart from taking
24	A. Again, the same kind of answer, no,	24	classes.
25	with that qualification.	25	Q. What percentage of your time did your
	Page 11		Page 13
1		1	
1 2	J. PHINNEY	1	J. PHINNEY
2	J. PHINNEY Q. Inflatable beds?	2	J. PHINNEY classwork take?
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	Page 14		Page 16
1	J. PHINNEY	1	J. PHINNEY
2	A. I think the experience I had is, you	2	MR. TUTTLE: Objection, form.
3	know, I think is equivalent to that amount of	3	A. Yes. I believe so.
4	experience.	4	Q. Take a look at page 4. Under D1,
5	Q. Thank you. So starting at paragraph	5	first sentence, do you see where it says,
6	19 in your declaration, you have a number of	6	"Mahoney is directed to a system and method for
7	claim terms that have been offered here for	7	adjusting the pressure in an inflatable object
8	construction. Do you see those?	8	such as an air bed"?
9	A. Yes.	9	Do you see that?
10	Q. Do you know if the board adopted any	10	A. Yes.
11	of those?	11	Q. Is that how you characterized
12	A. I don't believe the board did is my	12	Mahoney?
13	recollection.	13	A. I can check.
14	Q. Your opinions in your declaration are	14	Q. Would you, please.
15	based on the claim constructions that you've	15	A. I'll look at Exhibit 1, so, for
16	offered here; are they not?	16	instance, in my paragraph 70, I have a similar
17	A. I would say that they are, but that	17	sentence, but I say that the '154 patent is
18	my opinions wouldn't change with other claim	18	directed to a method for adjusting air pressure
19	constructions that have been offered in this	19	within an air bed.
20	case.	20	Q. Thank you. Do you agree that the
21	Q. Specifically, paragraph 20, the first	21	patent is directed to air beds and not generally
22	sentence, doesn't it say that you've applied the	22	inflatable objects?
23	constructions below?	23	A. It seems to be what I'm saying here,
24	A. Yes.	24	that the '154 patent is directed to adjusting air
25	Q. That means the constructions in	25	pressure within an air bed.
			•
	Page 15		Page 17
1	Page 15	1	Page 17
1 2	J. PHINNEY	1 2	J. PHINNEY
2	J. PHINNEY paragraphs 21 through 26; does it not?	2	J. PHINNEY Q. Thank you. So let's go back to your
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2 3 4 5 6 7	J. PHINNEY paragraphs 21 through 26; does it not? A. Yes, but as I Q. Thank you. Okay, let's take a look at I'm going to be handing you another document. (Whereupon, Phinney Exhibit 2,	2 3 4 5 6 7	J. PHINNEY Q. Thank you. So let's go back to your background for just a moment. That will be back in Exhibit 1. Any of your time in your professional career other than this casework related to inflatable beds?
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