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Transcript of John Patrick Abraham, Ph.D.

Date: December 18, 2019

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

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Transcript of John Patrick Abraham, Ph.D.
Conducted on December 18, 2019

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1 UNITED STATES PATENT AND TRADEMARK OFFICE	1 A P P E A R A N C E S
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD	2
3 -----	3 REPRESENTING THE PETITIONER:
4 AMERICAN NATIONAL	4 Mr. Jaspal Singh Hare
5 MANUFACTURING INC.,	5 Attorney at Law
6 Petitioner, IPR2019-00497	6 Spencer Fane LLP
7 v. U.S. PATENT 8,769,747	7 5700 Granite Parkway, Suite 650
8 SLEEP NUMBER CORPORATION IPR2019-00500	8 Plano, TX 75024-6622
9 f/k/a SELECT COMFORT U.S. PATENT 9,737,154	9 jhare@spencerfane.com
10 CORPORATION, IPR2019-00514	10
11 Patent Owner. U.S. PATENT 5,904,172	11 Mr. Brian T. Bear
12 -----	12 Attorney at Law
13 VIDEO DEPOSITION OF	13 Spencer Fane LLP
14 JOHN PATRICK ABRAHAM, Ph.D.	14 1000 Walnut Street, Suite 1400
15 MINNEAPOLIS, MINNESOTA	15 Kansas City, MO 64106-2140
16 WEDNESDAY, DECEMBER 18, 2019	16 bbear@spencerfane.com
17 9:06 A.M.	17
18	18
19	19
20 JOB NO.: 275005	20
21 PAGES: 1 - 190	21
22 REPORTED BY: PATRICK J. MAHON, RMR, CRR	22 (continued...)
2	4
1 DEPOSITION OF JOHN PATRICK ABRAHAM, Ph.D.,	1 APPEARANCES, continued:
2 HELD AT THE OFFICES OF:	2
3	3 REPRESENTING THE PATENT OWNER:
4	4 Ms. Archana Nath
5 FOX ROTHSCHILD LLP	5 Attorney at Law
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12	12 ltoft@foxrothschild.com
13 Pursuant to Notice, before Patrick J.	13
14 Mahon, Notary Public in and for the County of	14 ALSO PRESENT:
15 Hennepin, State of Minnesota.	15 Mr. Kyle Stolis, Videographer
16	16
17	17 * * *
18	18
19	19
20	20
21 * * * * *	21
22	22

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 Conducted on December 18, 2019

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1 PROCEEDINGS 2 WHEREUPON, the following proceedings were 3 duly had: 4 THE VIDEOGRAPHER: Here begins disk number 5 1 in the videotaped deposition of Dr. John 6 Abraham, in the matter of American National 7 Manufacturing Inc. versus Sleep Number 8 Corporation, et al., in the United States Patent 9 and Trademark Office, before the Patent Trial and 10 Appeal Board, case numbers IPR2019-00497, -00500, 11 and -00514. 12 Today's date is Wednesday, December 18th, 13 2019, at approximately 9:04 a.m. 14 The videographer today is Kyle Stolis, 15 representing Planet Depos. 16 This video deposition is taking place at 17 the law office of Fox Rothschild LLP in 18 Minneapolis, Minnesota. 19 Would counsel please voice identify 20 themselves and state whom they represent. 21 MR. HARE: My name is Jaspal Hare with 22 Spencer Fane. We represent Petitioner, American	1 please. 2 A Yes. It's John, J-o-h-n, Patrick, 3 P-a-t-r-i-c-k, Abraham, A-b-r-a-h-a-m. 4 Q Could you state your full name in one go? 5 A Pardon? Could you restate the question? 6 Q Oh. Could you just state your name in one 7 go? 8 A John Patrick Abraham. 9 Q Thank you. What's your address? 10 A My address is 4232 29th Avenue South, 11 11 Minneapolis, Minnesota 55406. 12 Q Is that your home address or your work 13 address? 14 A That is my home address. 15 Q Okay. Thank you. 16 Do you have a work address? 17 A I do. 18 Q What's your work address? 19 A I work at the University of St. Thomas, 20 20 which is at 2115 Summit Avenue, S-u-m-m-i-t, 21 21 St. Paul, Minnesota 55105. 22 Q All right. I'd like to go over a few
10	12
1 National. 2 MR. BEAR: Brian Bear on behalf of 3 Petitioner, American National. 4 MS. NATH: Archana Nath on behalf of 5 Patent Owner, Sleep Number Corporation. 6 THE VIDEOGRAPHER: Thank you. 7 The court reporter today is Patrick Mahon, 8 representing Planet Depos. 9 Would the reporter please swear in the 10 witness. 11 (The oath was administered by the 12 reporter.) 13 WITNESS RESPONSE: I do. 14 JOHN PATRICK ABRAHAM, Ph.D., 15 a witness in the above-entitled proceedings, after 16 having been first duly sworn deposed under oath as 17 follows: 18 EXAMINATION 19 BY MR. HARE: 20 Q Good morning. How are you doing? 21 A Very well. Thank you. 22 Q Could you state your name for the record,	1 ground rules before we start. I'll be asking you 2 questions that will be recorded by the court 3 reporter; do you understand? 4 A Yes. 5 Q Do you understand that you need to speak 6 up so the court reporter can record your answers? 7 A I do. 8 Q Do you understand that you need to keep 9 your answers clear and verbal, as nods and shakes 10 cannot be recorded? 11 A I do. 12 Q Do you understand that you're under oath? 13 A I do. 14 Q Do you understand that that oath requires 15 you to provide complete and candid answers to my 16 questions? 17 A I do. 18 Q Do you also understand that requires you 19 to answer my questions, not your own questions, or 20 provide information that is not responsive to my 21 questions? 22 A Can you restate that question?

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<p style="text-align: right;">13</p> <p>1 Q Do you understand that your oath requires</p> <p>2 you to answer my questions, not your own</p> <p>3 questions?</p> <p>4 A I do.</p> <p>5 MS. NATH: Object to the characterization</p> <p>6 of what the oath requires. Go ahead.</p> <p>7 BY MR. HARE:</p> <p>8 Q So, for example, if I ask a yes or no</p> <p>9 question, do you know how to answer a yes or no</p> <p>10 question?</p> <p>11 A I would have to hear the question that</p> <p>12 you're asking.</p> <p>13 Q Do you understand the penalty for</p> <p>14 violating your oath?</p> <p>15 A I do.</p> <p>16 Q What's your understanding?</p> <p>17 A Well, violating the oath would be a crime.</p> <p>18 That's my understanding.</p> <p>19 Q Okay. I'm going to try to ask clear,</p> <p>20 plain English questions, or if you don't</p> <p>21 understand my question, please don't answer it and</p> <p>22 let me know. Okay?</p>	<p style="text-align: right;">15</p> <p>1 Q Do you have any questions over the</p> <p>2 procedure we'll follow today?</p> <p>3 A None at this time.</p> <p>4 Q Have you ever been deposed before?</p> <p>5 A I have.</p> <p>6 Q Approximately how many times?</p> <p>7 A Approximately 14.</p> <p>8 Q Generally, what was the nature of those</p> <p>9 depositions? For example, were they patent</p> <p>10 matters or other types of law?</p> <p>11 A I have been deposed in patent matters, and</p> <p>12 I have been deposed in other matters of law.</p> <p>13 Q Okay. About how many of your depositions</p> <p>14 were on patent matters? And you can estimate.</p> <p>15 A Perhaps eight to ten.</p> <p>16 Q Do you have experience outside of this</p> <p>17 current proceeding, or this current set of</p> <p>18 proceedings, with PTO or IPR matters?</p> <p>19 A Yes.</p> <p>20 Q Do you know the caption or the case number</p> <p>21 of the last matter in the PTO that you were a part</p> <p>22 of?</p>
<p style="text-align: right;">14</p> <p>1 A Yes.</p> <p>2 Q If you realize at some point that your</p> <p>3 answer is inaccurate or incomplete, will you also</p> <p>4 please let me know?</p> <p>5 A I will.</p> <p>6 Q Also, if you're answering a question and</p> <p>7 you think of a document that may be helpful in</p> <p>8 answering that, please let me know, because we may</p> <p>9 have it here.</p> <p>10 A Thank you.</p> <p>11 Q I generally like to take breaks every</p> <p>12 hour, maybe hour and a half. If you need a break</p> <p>13 earlier, we'll try our best to accommodate you. I</p> <p>14 would just ask that you answer the pending</p> <p>15 question. Is that okay?</p> <p>16 A It is. Thank you.</p> <p>17 Q Is there any reason you cannot testify</p> <p>18 fully and accurately today?</p> <p>19 A No.</p> <p>20 Q You're not on any drugs or alcohol that</p> <p>21 would affect your testimony?</p> <p>22 A I am not.</p>	<p style="text-align: right;">16</p> <p>1 A I don't know what the acronym "PTO" means,</p> <p>2 sitting here now, but I have been involved in</p> <p>3 other IPR litigations.</p> <p>4 Q When I say PTO, I mean, the United States</p> <p>5 Patent and Trademark Office.</p> <p>6 A Thank you for that clarification.</p> <p>7 Q Do you understand it's commonly referred</p> <p>8 to as USPTO or PTO; correct?</p> <p>9 A That is how I understand it.</p> <p>10 Q Okay. And then IPR, that's inter partes</p> <p>11 review; do you understand that?</p> <p>12 A I do.</p> <p>13 Q All right. And just to make sure we're</p> <p>14 talking about these proceedings or this</p> <p>15 proceeding, we're talking about the three IPR</p> <p>16 proceedings instituted by American National</p> <p>17 challenging Sleep Number patents. And I'm just</p> <p>18 going to read those IPR numbers into the record.</p> <p>19 The first is IPR2019-00514 involving U.S. Patent</p> <p>20 5,904,172. If I refer to that as the -514</p> <p>21 proceeding or the proceeding involving the '172</p> <p>22 patent, does that make sense?</p>

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