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Transcript of William C. Messner, Ph.D.

Date: December 11, 2019

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

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Transcript of William C. Messner, Ph.D.
Conducted on December 11, 2019

1	3
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 IPR2019-00497	4 Mr. Kyle L. Elliott
5 MANUFACTURING INC., U.S. PATENT 8,769,747	5 Attorney at Law
6 Petitioner,	6 Mr. Kevin S. Tuttle
7 v.	7 Attorney at Law
8 SLEEP NUMBER CORPORATION IPR2019-00500	8 Spencer Fane LLP
9 f/k/a SELECT COMFORT U.S. PATENT 9,737,154	9 1000 Walnut Street, Suite 1400
10 CORPORATION,	10 Kansas City, MO 64106-2140
11 Patent Owner.	11 kelliott@spencerfane.com
12 -----	12 ktuttle@spencerfane.com
13	13
13 VOLUME I VIDEO DEPOSITION OF	14 REPRESENTING THE PATENT OWNER:
14 WILLIAM C. MESSNER, Ph.D.	15 Mr. Luke Toft
15 MINNEAPOLIS, MINNESOTA	16 Attorney at Law
16 WEDNESDAY, DECEMBER 11, 2019	17 Fox Rothschild LLP
17 9:10 A.M.	18 222 South 9th Street, Suite 2000
18	19 Minneapolis, MN 55402
19	20 ltoft@foxrothschild.com
20 JOB NO.: 275000	21
21 PAGES: 1 - 306	22 ALSO PRESENT: Jacob Arvold, Videographer
22 REPORTED BY: PATRICK J. MAHON, RMR, CRR	
2	4
1 DEPOSITION OF WILLIAM C. MESSNER, PH.D.,	1 I N D E X
2 HELD AT THE OFFICES OF:	2 EXAMINATION:
3	3 BY MR. ELLIOTT - PAGE 9
4	4
5 FOX ROTHSCHILD LLP	5 EXHIBITS REFERRED TO:
6 222 SOUTH 9TH STREET	6 NUMBER/DESCRIPTION PAGE
7 MINNEAPOLIS, MINNESOTA 55402-3338	7 Exhibit 1..... 16
8	8 Declaration of Dr. William
9	9 C. Messner In Support Of
10	10 Patent Owner's Response on
11	11 Patent '154 and CV
12	12 (170 pages)
13 Pursuant to Notice, before Patrick J.	13 Exhibit 2..... 18
14 Mahon, Notary Public in and for the County of	14 Declaration of Dr. William
15 Hennepin, State of Minnesota.	15 C. Messner In Support Of
16	16 Patent Owner's Response on
17	17 Patent '747 and CV
18	18 (170 pages)
19	19 Exhibit 3..... 45
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21 * * * * *	21 (10 pages)
22	22 (continued...)

5	7
1 EXHIBITS, continued:	1 EXHIBITS, continued:
2 EXHIBIT/DESCRIPTION PAGE	2 EXHIBIT/DESCRIPTION PAGE
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4 Patent 3,068,494	4 Patent No.: US 7,022,113 B2,
5 (3 pages)	5 Lockwood et al.
6 Exhibit 5..... 90	6 (69 pages)
7 Nonlinear Modeling and Control	7 Exhibit 13..... 231
8 of a Mechanically Coupled	8 Patent Number: 6,088,643
9 Variable Resistance and Squeeze	9 (16 pages)
10 Pump for Pressure Regulation in	10 Exhibit 14..... 239
11 Microfluidics	11 International Application
12 (7 pages)	12 Published Under the Patent
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14 Modeling and Control of a	14 (Page 250 - 285)
15 Nonlinear Mechanism for High	15 Exhibit 15..... 261
16 Performance Microfluidic Systems	16 Patent Number: 5,904,172,
17 (9 pages)	17 Giff et al
18 Exhibit 7..... 139	18 (17 pages)
19 Patent No.: US 8,769,747 B2,	19
20 Mahoney et al.	20
21 (16 pages)	21
22 (continued...)	22
6	8
1 EXHIBITS, continued:	1 P R O C E E D I N G S
2	2 WHEREUPON, the following proceedings were
3 EXHIBIT/DESCRIPTION PAGE	3 duly had:
4 Exhibit 8..... 175	4 THE VIDEOGRAPHER: Here begins disk number
5 Patent Number: 5,629,873,	5 1 in the videotaped deposition of Dr. William C.
6 Mittal et al.	6 Messner in the matter of American National
7 (29 pages)	7 Manufacturing Inc. versus Sleep Number
8 Exhibit 9..... 186	8 Corporation, before the Patent Trial and Appeal
9 Patent Number: 5,277,187,	9 Board, United States Patent and Trademark Office,
10 Pillsbury	10 Case Nos. IPR2019-00497 and IPR2019-00500.
11 (23 pages)	11 Today's date is December 11th, 2018 (sic).
12 Exhibit 10..... 204	12 The time on the video monitor is 9:11 a.m.
13 Patent No.: US 9,737,154 B2,	13 The videographer today is Jacob Arvold,
14 Mahoney et al.	14 representing Planet Depos. This video deposition
15 (20 pages)	15 is taking place at 222 South 9th Street,
16 Exhibit 11..... 207	16 Suite 2000, Minneapolis, Minnesota.
17 Pub. No.: US 2007/0000559 A1,	17 Would counsel please voice identify
18 Ebel	18 themselves and state whom they represent.
19 (10 pages)	19 MR. ELLIOTT: Kyle Elliott with Spencer
20	20 Fane representing American National.
21	21 MR. TOFT: And Luke Toft with Fox
22 (continued...)	22 Rothschild representing Sleep Number Corporation.

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9	11
<p>1 THE VIDEOGRAPHER: The court reporter 2 today is Patrick Mahon, representing Planet Depos. 3 Would the reporter please swear in the witness. 4 (The oath was administered by the 5 reporter.) 6 WITNESS RESPONSE: I do. 7 WILLIAM C. MESSNER, Ph.D., 8 a witness in the above-entitled proceedings, after 9 having been first duly sworn, deposed under oath 10 as follows: 11 EXAMINATION 12 BY MR. ELLIOTT: 13 Q Good morning, Dr. Messner. How are you? 14 A Good morning. Very well. Thank you. 15 Q I know -- and I'll get into depositions 16 here in a little bit, so I know you've had them 17 taken before, but I'll still go over a few ground 18 rules so we have them on the record. Does that 19 make sense? 20 A I appreciate it. 21 Q Yeah. So please answer questions 22 verbally, not with a physical movement such as a</p>	<p>1 A Yes, I understand. 2 Q Also, let me know if you need a break. 3 The one rule about breaks is, you can't take a 4 break while a question is pending. So I would 5 just ask that if there is a question pending, that 6 you answer the question, then we can go on a 7 break. 8 A Okay. 9 Q Is there any reason why you can't give 10 truthful testimony today? 11 A No, no reason at all. 12 Q Would you please state your full name for 13 the record? 14 A William Charles Messner. 15 Q Thank you. And what's your current 16 address, Dr. Messner? 17 A 8 West Winkley Street, W-i-n-k-l-e-y, 18 Amesbury, Massachusetts. 19 Q And are you aware of the current matters 20 before the Patent Trial and Appeal Board regarding 21 U.S. Patent Nos. -- well, let me just start with 22 one, regarding U.S. Patent No. 5,904,172?</p>
10	12
<p>1 nod or a shrug so the court reporter can record 2 your answer; do you understand that? 3 A Yes, I do. 4 Q Excellent. You understand the deposition 5 is being videotaped; right? 6 A Yes, I do. 7 Q And then also, if you would, wait for my 8 question to be completed before you respond. 9 A Will do. 10 Q Okay. And sometimes your counsel may 11 object, and so you might want to leave a little 12 space for him to be able to do that when he needs 13 to. 14 If you ever have a question you don't 15 understand, please let me know. 16 A Will do. 17 Q If you need it repeated, the court 18 reporter can read it back for you. 19 A Okay. 20 Q If your counsel does object, you still 21 need to answer the question, unless they 22 specifically instruct you not to answer.</p>	<p>1 A Yes. 2 Q And also the matter before the Patent 3 Trial and Appeal Board involving U.S. Patent No. 4 9,737,154? 5 A Yes. 6 Q Great. Are you being compensated for 7 attending today's deposition? 8 A Yes. 9 Q And how much are you being paid hourly? 10 A \$575 an hour. 11 Q And how much have you been paid so far for 12 the two referenced IPRs? 13 A Jee, I'm -- well, I've invoiced for a 14 bunch, and I've not been paid for everything just 15 yet. I believe it's on the order of \$50,000, but 16 I'd have to check my records. 17 Q Is the 50,000 what you've invoiced or what 18 you've been paid? 19 A I believe that's what I've invoiced, but 20 honestly, I really would have to go back and check 21 my records. 22 Q To the best of your recollection, what's</p>

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13	<p>1 the difference between what you've invoiced and 2 what you've been paid so far? 3 A You know, I can't remember. I just know 4 that I tend to get paid on a -- approximately 5 60 days. So my last invoice hasn't been paid yet, 6 and the invoice before that hasn't been paid yet, 7 yeah. 8 Q Gotcha. And to the best of your 9 recollection, what's the total amount you've 10 invoiced? 11 A Again, I think that's around \$50,000, but 12 I would have to check my records. 13 Q And are you also aware of a third IPR 14 that's been brought by Petitioner, American 15 National? 16 A I'm not sure which IPR you're referring 17 to. 18 Q That would be the IPR involving the '172 19 patent, full patent. 20 A So I believe that earlier you said the 21 '172, so I think I've already said I was aware of 22 that.</p>
14	<p>1 Q You are correct. I did, Dr. Messner. I 2 read that incorrectly. 3 Let me back up and let's try that again. 4 So this time I'll do it in a compound. Are you 5 currently aware, because this is what your 6 testimony is pertaining to today -- 7 A That's right. 8 Q -- are the Patent Trial and Appeal Board 9 matters regarding U.S. Patent No. 9,737,154 and 10 U.S. Patent No. 8,769,747? 11 A Yes. 12 Q Okay. And how much have you invoiced for 13 those two IPR matters? 14 A Oh, I see what you're asking. So you mean 15 the IPR for the '154 and the '747 -- 16 Q Yes. 17 A -- together -- 18 Q Yes. 19 A -- versus the '172? 20 Q Yes. 21 A I can't separate them. I don't know. 22 Q Okay. So the 50,000 is the total for all</p>
15	<p>1 three? 2 A I believe so. 3 Q Okay. 4 A Yeah. 5 Q All right. 6 A But again, I would have to check my 7 records to make sure it's an accurate number. 8 Q Do you consult with Sleep Number on any 9 other matters? 10 A No. 11 Q Have you ever consulted with Comfortaire? 12 A No. 13 Q And do you know who Comfortaire is? 14 A I've heard of them. I understand they're 15 one of the players that either are still involved 16 or at least in the past were involved in producing 17 inflatable air mattresses. 18 Q Do you know Sleep Number's previous name? 19 A Not off the top of my head. I do remember 20 that there was a name. 21 Q Okay. I always got to ask this question 22 in these cases of the witnesses. What kind of</p>
16	<p>1 mattress do you use? 2 A Oh. Well, it's not an inflatable air 3 mattress. I don't remember what mattress it is, 4 yeah. 5 Q Let me go ahead and introduce a couple of 6 exhibits here. 7 MR. ELLIOTT: And thank you, Mr. Toft, for 8 having copies of these made so I didn't have to 9 lug them from Kansas City. 10 MR. TOFT: Yeah. Sorry, there was three 11 of them. There was a little miscommunication 12 there, but... 13 MR. ELLIOTT: That's okay. I figured I'd 14 hand them back to you. 15 (Exhibit 1 was marked for identification.) 16 BY MR. ELLIOTT: 17 Q Dr. Messner, let me hand you what's been 18 marked as Messner Exhibit Number 1. 19 A Uh-huh. 20 Q If you would, please, take a moment to 21 review that, and after you've had a chance to 22 review it --</p>

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