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Transcript of William C. Messner, Ph.D.

Date: January 8, 2020

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

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CONFIDENTIAL INFORMATION REDACTED

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1 (1 to 4)

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<p style="text-align: center;">1</p> <p>1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD 3 ----- 4 AMERICAN NATIONAL IPR2019-00514 5 MANUFACTURING INC., Patent No. 5,904,172 6 Petitioner, 7 v. 8 SLEEP NUMBER CORPORATION 9 f/k/a SELECT COMFORT 10 CORPORATION, 11 Patent Owner. 12 ----- 13 CONFIDENTIAL INFORMATION REDACTED 14 VIDEO DEPOSITION OF 15 WILLIAM C. MESSNER, PH.D. 16 MINNEAPOLIS, MINNESOTA 17 WEDNESDAY, JANUARY 8, 2020 18 8:08 A.M. 19 20 JOB NO.: 275010 21 PAGES: 1 - 203 22 REPORTED BY: MYRINA A. KLEINSCHMIDT, RMR, CRR</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 REPRESENTING THE PETITIONER: 4 Mr. Kyle L. Elliott 5 Attorney at Law 6 Spencer Fane LLP 7 1000 Walnut Street, Suite 1400 8 Kansas City, MO 64106-2140 9 kellioott@spencerfane.com 10 11 REPRESENTING THE PATENT OWNER: 12 Ms. Archana Nath 13 Attorney at Law 14 Fox Rothschild LLP 15 222 South Ninth Street, Suite 2000 16 Minneapolis, MN 55402 17 anath@foxrothschild.com 18 19 ALSO PRESENT: 20 Mr. Kyle Stolis, Videographer 21 22 * * * * *</p>
<p style="text-align: center;">2</p> <p>1 VIDEO DEPOSITION OF WILLIAM C. 2 MESSNER, PH.D., HELD AT THE OFFICES OF: 3 4 5 6 FOX ROTHSCHILD LLP 7 222 SOUTH NINTH STREET 8 MINNEAPOLIS, MINNESOTA 55402 9 10 11 12 13 14 Pursuant to Notice, before Myrina A. 15 Kleinschmidt, Notary Public in and for the County 16 of Hennepin, State of Minnesota. 17 18 19 20 21 22 * * * * *</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">I N D E X</p> <p>1 EXAMINATION: 2 By Mr. Elliott - Pages 11 and 200 3 By Ms. Nath - Page 183 4 5 CONFIDENTIAL RECORD: 6 Pages 105 - 113 7 Pages 193 - 194 8 9 EXHIBITS: 10 NUMBER/DESCRIPTION PAGE 11 12 Exhibit 1 10 13 Declaration of Dr. William C. 14 Messner in Support of Patent 15 Owner's Response 16 (130 pages) 17 18 Exhibit 2 40 19 United States Patent number 20 5,383,894; dated Jan. 24, 1995 21 (9 pages) 22 (continued...)</p>

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5		7	
1	EXHIBITS, continued:	1	EXHIBITS, continued:
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3	EXHIBIT/DESCRIPTION PAGE	3	EXHIBIT/DESCRIPTION PAGE
4		4	
5	Exhibit 3 52	5	Exhibit 9115
6	Goodwin, Patent number 3,177,018	6	United States Patent number
7	(4 pages)	7	5,494,074; dated Feb. 27, 1996
8		8	(20 pages)
9	Exhibit 4 55	9	
10	United States Patent number	10	Exhibit 10142
11	4,309,783; dated Jan. 12, 1982	11	A Systematic Approach go Integral
12	(18 pages)	12	Snap-Fit Attachment Design
13		13	(10 pages)
14	Exhibit 5 63	14	
15	United States Patent number	15	Exhibit 11153
16	5,904,172; dated May 18, 1999	16	United States Patent number
17	(17 pages)	17	5,353,838; dated Oct. 11, 1994
18		18	(10 pages)
19		19	
20		20	
21		21	
22	(continued...)	22	(continued...)
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1	EXHIBITS, continued:	1	EXHIBITS, continued:
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5	Exhibit 6 78	5	Exhibit 12156
6	International Application	6	U.S. Patent No. 5,904,172
7	Published Under the Patent	7	versus Sealy Air Controllers
8	Cooperation Treaty (PCT), number WO	8	(7 pages)
9	96/13947, dated 9 May 1996	9	
10	(64 pages)	10	Exhibit 13160
11		11	Declaration of Dr. John Abraham
12	Exhibit 7 79	12	in Support of Patent Owner's Response
13	United States Patent number	13	(101 pages)
14	5,652,484; dated Jul. 29, 1997	14	
15	(31 pages)	15	Exhibit 14167
16		16	United States Patent number
17	Exhibit 8 80	17	4,655,505; dated Apr. 7, 1987
18	United States Patent number	18	(15 pages)
19	5,509,154; dated Apr. 23, 1996	19	
20	(29 pages)	20	
21		21	
22	(continued...)	22	(continued...)

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<p>9</p> <p>1 EXHIBITS, continued:</p> <p>2</p> <p>3 EXHIBIT/DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit 15170</p> <p>6 Opening Expert Report of Dr. Robert</p> <p>7 Giachetti in Support of Petitioner</p> <p>8 American National Manufacturing,</p> <p>9 Inc.'s Petition for Inter Partes</p> <p>10 Review of U.S. Patent 5,904,172</p> <p>11 (203 pages)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 * * * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>11</p> <p>1 Fane on behalf of petitioner American National.</p> <p>2 Also appearing with me today will be Mr. Brian</p> <p>3 Bear, also of Spencer Fane.</p> <p>4 MS. NATH: Archana Nath with Fox</p> <p>5 Rothschild on behalf of the patent owner, Sleep</p> <p>6 Number Corporation.</p> <p>7 THE VIDEOGRAPHER: Thank you.</p> <p>8 The court reporter today is Myrina. I'm</p> <p>9 sorry, Myrina, what is your last name?</p> <p>10 COURT STENOGRAPHER: Kleinschmidt.</p> <p>11 THE VIDEOGRAPHER: Kleinschmidt. Thank</p> <p>12 you. Would the court reporter please swear in the</p> <p>13 witness.</p> <p>14 (The oath was administered by the court</p> <p>15 stenographer.)</p> <p>16 WITNESS RESPONSE: I do.</p> <p>17 WILLIAM C. MESSNER, PH.D.,</p> <p>18 a witness in the above-entitled proceedings,</p> <p>19 after having been first duly sworn,</p> <p>20 testified under oath as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. ELLIOTT:</p>
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<p>10</p> <p>1 P R O C E E D I N G S</p> <p>2 WHEREUPON, the following proceedings were</p> <p>3 duly had:</p> <p>4 (Deposition Exhibit Number 1 marked for</p> <p>5 identification by the court stenographer.)</p> <p>6 THE VIDEOGRAPHER: Good morning. Here</p> <p>7 begins disk number 1 in the videotaped deposition</p> <p>8 of Dr. William C. Messner, Ph.D., in the matter of</p> <p>9 American National Manufacturing, Inc., versus</p> <p>10 Sleep Number Corporation, et al., in the United</p> <p>11 States Patent and Trademark Office before the</p> <p>12 Patent Trial and Appeal Board, case numbers</p> <p>13 IPR2019-0049700500 and 00514.</p> <p>14 Today's date is Wednesday, January 8th,</p> <p>15 2020. The time on the video monitor is 8:08 a.m.</p> <p>16 The videographer today is Kyle Stolis representing</p> <p>17 Planet Depos. This video deposition is taking</p> <p>18 place at the law office of Fox Rothschild, LLP in</p> <p>19 Minneapolis, Minnesota.</p> <p>20 Would counsel please voice identify</p> <p>21 themselves and state whom they represent.</p> <p>22 MR. ELLIOTT: Kyle Elliott with Spencer</p>	<p>12</p> <p>1 Q Good morning, Dr. Messner. How are you?</p> <p>2 A Good morning.</p> <p>3 Q When did you arrive in Minneapolis for</p> <p>4 your deposition?</p> <p>5 A I arrived on Sunday evening.</p> <p>6 Q And thank you for the flexibility changing</p> <p>7 our start date. As you can tell, I'm a little</p> <p>8 under the weather. So it was to everybody's</p> <p>9 benefit for me to have another day of recovery.</p> <p>10 You've been down this road several</p> <p>11 times --</p> <p>12 A Yes.</p> <p>13 Q -- but I'd like to ask that you please</p> <p>14 answer questions verbally, not with a physical</p> <p>15 gesture.</p> <p>16 A Certainly.</p> <p>17 Q And you understand the video is -- or</p> <p>18 deposition is being videotaped?</p> <p>19 A I do.</p> <p>20 Q And if you would, please wait until I've</p> <p>21 completed my question before responding.</p> <p>22 A I'll do that.</p>
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<p style="text-align: right;">13</p> <p>1 Q And if you need a question repeated, 2 please let us know. The court reporter can read 3 it back or I can restate it. And if you don't 4 understand a question, will you let me know? 5 A Of course. 6 Q And it's possible that counsel objects, 7 and then you still need to answer the question, 8 unless you're specifically instructed not to 9 answer. Do you understand that? 10 A Yes, I understand that. 11 Q And if you need a break, let us know, 12 obviously. 13 A Will do. 14 Q Is there any reason that you cannot 15 testify truthfully today? 16 A No. 17 Q Would you please state your full name and 18 address for the record? 19 A William Charles Messner, 8 West Winkley 20 Street, Amesbury, Massachusetts. 21 Q I'll hand you what's been marked as 22 Exhibit Number 1. If you would, please,</p>	<p style="text-align: right;">15</p> <p>1 field of adjustable air mattress systems? 2 A That's right. 3 Q And who did you specifically talk to? 4 A I spoke to Mr. Paul Mahoney. 5 Q Anyone else? 6 A Not that I recall at the moment. 7 Q Did you ever speak with Wade Palashewski? 8 A No. 9 Q Did you ever speak with a gentleman by the 10 name of Mr. Shafer? 11 A I don't believe so. 12 Q Or Duval? 13 A I don't recall speaking with him. 14 Q What's the time frame of your experience 15 in the air adjustable mattress industry at this 16 point? 17 A Well, I haven't worked for any adjustable 18 mattress companies, if that's what you're talking 19 about. My experience with the industry would be 20 related to this matter and the '154 and the '747 21 matters. 22 Q So your only experience with the</p>
<p style="text-align: right;">14</p> <p>1 Dr. Messner, take a look at that and give us a 2 brief description for the record. 3 A This appears to be my declaration in 4 support of the patent owner's response regarding 5 the Patent 5,904,172. 6 Q And is this a complete and accurate copy 7 of your declaration? 8 A I believe so, but just give me a moment 9 to -- 10 Q Yeah, please take your time to look at it. 11 I realize that's kind of a broad question. 12 A (Reviewing.) Yes, this also includes my 13 CV. Yes, it appears to be a complete and accurate 14 copy. I'll let you know if I discover 15 otherwise -- 16 Q Thank you. 17 A -- during the proceeding here. 18 Q If I can direct your attention to 19 paragraph 18. 20 A Yes. 21 Q In this paragraph you indicate that you 22 took the opportunity to learn from those in the</p>	<p style="text-align: right;">16</p> <p>1 adjustable air mattress industry is in connection 2 with this matter? 3 A I believe that the only direct experience 4 would be in conjunction with these matters. 5 Q And in your report you identify some of 6 your background work. Was the engineering subject 7 matter with regard to these air mattress systems 8 more or less complex than the problems that you 9 were trying to solve in the comprehensive 10 automation for specialty crops project? And 11 that's in paragraph 6 of your report, if you want 12 to refer back to it. 13 A Okay. (Reviewing.) 14 You're talking about -- that's actually 15 paragraph 7. 16 Q My apologies. Yeah, there's a string of 17 paragraphs there, 6 through 9, that kind of has 18 your background? 19 A I would say probably it was more complex. 20 Q Which one was more complex? 21 A Sorry. The specialty crops was more 22 complex.</p>

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