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Transcript of Paul J. Mahoney

Date: January 9, 2020

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

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Transcript of Paul J. Mahoney
Conducted on January 9, 2020

1 (1 to 4)

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. Brian T. Bear
5 MANUFACTURING INC., IPR2019-00500	5 Attorney at Law
6 Petitioner, IPR2019-00514	6 Mr. Kyle L. Elliott (present a.m. session)
7 v.	7 Attorney at Law
8 SLEEP NUMBER CORPORATION U.S. PATENT 8,769,747	8 Spencer Fane LLP
9 f/k/a SELECT COMFORT U.S. PATENT 9,737,154	9 1000 Walnut Street, Suite 1400
10 CORPORATION, U.S. PATENT 5,904,172	10 Kansas City, MO 64106-2140
11 Patent Owner.	11 bbear@spencerfane.com
12 -----	12 kelliott@spencerfane.com
13 VIDEO DEPOSITION OF	13
14 PAUL J. MAHONEY	14
15 MINNEAPOLIS, MINNESOTA	15
16 THURSDAY, JANUARY 9, 2020	16
17 8:07 A.M.	17
18	18
19	19
20 JOB NO.: 278016	20
21 PAGES: 1 - 181	21
22 REPORTED BY: PATRICK J. MAHON, RMR, CRR	22 (continued...)
2	4
1 VIDEO DEPOSITION OF PAUL J. MAHONEY, HELD	1 APPEARANCES, continued:
2 AT THE OFFICES OF:	2
3	3 REPRESENTING THE PATENT OWNER:
4	4 Mr. Luke Toft
5 FOX ROTHSCHILD LLP	5 Attorney at Law
6 222 SOUTH 9TH STREET	6 Fox Rothschild LLP
7 MINNEAPOLIS, MINNESOTA 55402-3338	7 222 South 9th Street, Suite 2000
8	8 Minneapolis, MN 55402
9	9 ltoft@foxrothschild.com
10	10
11	11 ALSO PRESENT: Kyle Stolis, Videographer
12	12
13 Pursuant to Notice, before Patrick J.	13 * * *
14 Mahon, Notary Public in and for the County of	14
15 Hennepin, State of Minnesota.	15
16	16
17	17
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19	19
20	20
21 * * * * *	21
22	22

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5	7																																		
<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION:</p> <p>4 BY MR. BEAR - PAGES 8 and 174</p> <p>5 BY MR. TOFT - PAGE 163</p> <p>6 EXHIBITS:</p> <table border="1"><thead><tr><th data-bbox="198 457 841 483">NUMBER/DESCRIPTION</th><th data-bbox="841 457 1482 483">PAGE</th></tr></thead><tbody><tr><td data-bbox="198 493 841 619">8 Exhibit 1.....</td><td data-bbox="841 493 1482 619">142</td></tr><tr><td data-bbox="198 619 841 661">9 Videotape Deposition transcript</td><td></td></tr><tr><td data-bbox="198 661 841 703">10 of Paul James Mahoney on 2/17/16</td><td></td></tr><tr><td data-bbox="198 703 841 745">11 (123 pages)</td><td></td></tr><tr><td data-bbox="198 745 841 787">12 Exhibit 1001.....</td><td data-bbox="841 745 1482 787">45</td></tr><tr><td data-bbox="198 787 841 829">13 Patent No.: 5,904,172</td><td></td></tr><tr><td data-bbox="198 829 841 871">14 (17 pages)</td><td></td></tr><tr><td data-bbox="198 871 841 913">15 Exhibit 1001.....</td><td data-bbox="841 871 1482 913">105</td></tr><tr><td data-bbox="198 913 841 955">16 Patent No.: US 8,769,747 B2</td><td></td></tr><tr><td data-bbox="198 955 841 997">17 AMERICAN NATIONAL MANUFACTURING,</td><td></td></tr><tr><td data-bbox="198 997 841 1039">18 INC. - EX 1001 - Page 1 - Page 16</td><td></td></tr><tr><td data-bbox="198 1039 841 1081">19</td><td></td></tr><tr><td data-bbox="198 1081 841 1123">20</td><td></td></tr><tr><td data-bbox="198 1123 841 1165">21</td><td></td></tr><tr><td data-bbox="198 1165 841 1207">22 (continued...)</td><td></td></tr></tbody></table>	NUMBER/DESCRIPTION	PAGE	8 Exhibit 1.....	142	9 Videotape Deposition transcript		10 of Paul James Mahoney on 2/17/16		11 (123 pages)		12 Exhibit 1001.....	45	13 Patent No.: 5,904,172		14 (17 pages)		15 Exhibit 1001.....	105	16 Patent No.: US 8,769,747 B2		17 AMERICAN NATIONAL MANUFACTURING,		18 INC. - EX 1001 - Page 1 - Page 16		19		20		21		22 (continued...)		<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 THE VIDEOGRAPHER: Good morning. Here</p> <p>5 begins Disk Number 1 in the videotaped deposition</p> <p>6 of Paul Mahoney in the matter of American National</p> <p>7 Manufacturing Inc. versus Sleep Number</p> <p>8 Corporation, et al., in the United States Patent</p> <p>9 and Trademark Office before the Patent Trial and</p> <p>10 Appeal Board, case numbers IPR2019-00497, -00500,</p> <p>11 and -00514.</p> <p>12 Today's date is Thursday, January 9, 2020.</p> <p>13 The time on the video monitor is 8:07 a.m.</p> <p>14 The videographer today is Kyle Stolis,</p> <p>15 representing Planet Depos.</p> <p>16 This video deposition is taking place at</p> <p>17 the law office of Fox Rothschild LLP in</p> <p>18 Minneapolis, Minnesota.</p> <p>19 Would counsel please voice-identify</p> <p>20 themselves and state whom they represent.</p> <p>21 MR. BEAR: Brian Bear of the Spencer Fane</p> <p>22 LLP law firm on behalf of Petitioner, American</p>		
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<p>1 EXHIBITS, continued:</p> <p>2</p> <table border="1"><thead><tr><th data-bbox="198 1144 841 1165">EXHIBIT/DESCRIPTION</th><th data-bbox="841 1144 1482 1165">PAGE</th></tr></thead><tbody><tr><td data-bbox="198 1176 841 1218">3 Exhibit 2079.....</td><td data-bbox="841 1176 1482 1218">25</td></tr><tr><td data-bbox="198 1218 841 1260">4 Historical FCS Timeline</td><td></td></tr><tr><td data-bbox="198 1260 841 1302">5 Sleep Number Corp. EXHIBIT 2079</td><td></td></tr><tr><td data-bbox="198 1302 841 1344">6 IPR2019-00514, Page 1 - Page 21</td><td></td></tr><tr><td data-bbox="198 1344 841 1386">7 SN_0021013 - 33</td><td></td></tr><tr><td data-bbox="198 1386 841 1428">8 Exhibit 1001.....</td><td data-bbox="841 1386 1482 1428">106</td></tr><tr><td data-bbox="198 1428 841 1470">9 Patent No.: US 9,737,154 B2</td><td></td></tr><tr><td data-bbox="198 1470 841 1512">10 AMERICAN NATIONAL MANUFACTURING,</td><td></td></tr><tr><td data-bbox="198 1512 841 1554">11 INC. - EX 1001 - Page 1 - Page 20</td><td></td></tr><tr><td data-bbox="198 1554 841 1596">12 Exhibit 2056.....</td><td data-bbox="841 1554 1482 1596">12</td></tr><tr><td data-bbox="198 1596 841 1638">13 Declaration of Paul Mahoney In</td><td></td></tr><tr><td data-bbox="198 1638 841 1680">14 Support Of Patent Owner's Response</td><td></td></tr><tr><td data-bbox="198 1680 841 1722">15 Sleep Number Corp. EXHIBIT 2056,</td><td></td></tr><tr><td data-bbox="198 1722 841 1764">16 IPR2019-00514, Page 1 - Page 12</td><td></td></tr><tr><td data-bbox="198 1764 841 1806">17</td><td></td></tr><tr><td data-bbox="198 1806 841 1850">18</td><td></td></tr></tbody></table>	EXHIBIT/DESCRIPTION	PAGE	3 Exhibit 2079.....	25	4 Historical FCS Timeline		5 Sleep Number Corp. EXHIBIT 2079		6 IPR2019-00514, Page 1 - Page 21		7 SN_0021013 - 33		8 Exhibit 1001.....	106	9 Patent No.: US 9,737,154 B2		10 AMERICAN NATIONAL MANUFACTURING,		11 INC. - EX 1001 - Page 1 - Page 20		12 Exhibit 2056.....	12	13 Declaration of Paul Mahoney In		14 Support Of Patent Owner's Response		15 Sleep Number Corp. EXHIBIT 2056,		16 IPR2019-00514, Page 1 - Page 12		17		18		<p>1 National Manufacturing, Incorporated.</p> <p>2 MR. TOFT: And Luke Toft with Fox</p> <p>3 Rothschild LLP, representing Sleep Number</p> <p>4 Corporation.</p> <p>5 THE VIDEOGRAPHER: Thank you.</p> <p>6 The court reporter today is Patrick Mahon,</p> <p>7 representing Planet Depos.</p> <p>8 Would the reporter please swear in the</p> <p>9 witness.</p> <p>10 (The oath was administered by the</p> <p>11 reporter.)</p> <p>12 THE WITNESS RESPONSE: I do.</p> <p>13 PAUL J. MAHONEY,</p> <p>14 a witness in the above-entitled proceedings, after</p> <p>15 having been first duly sworn, deposed under oath</p> <p>16 as follows:</p> <p>17 EXAMINATION</p> <p>18 BY MR. BEAR:</p> <p>19 Q Could you state your name for the record,</p> <p>20 please.</p> <p>21 A Paul James Mahoney.</p> <p>22 Q Mr. Mahoney, where do you currently</p>
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<p style="text-align: right;">9</p> <p>1 reside?</p> <p>2 A Stillwater, Minnesota.</p> <p>3 Q Stillwater, Minnesota.</p> <p>4 I know from some documents in front of me</p> <p>5 that you have been deposed before; is that</p> <p>6 correct?</p> <p>7 A That is correct.</p> <p>8 Q Okay. You were deposed on or about</p> <p>9 March 10, 2016, in an International Trade</p> <p>10 Commission case; do you recall that, sir?</p> <p>11 A I recall the case, but I don't remember</p> <p>12 the date.</p> <p>13 Q Is it approximately 2016? Would that be</p> <p>14 consistent with your memory?</p> <p>15 A I just don't remember.</p> <p>16 Q Okay. You were also deposed on or about</p> <p>17 February 17, 2016, in a case, Select Comfort</p> <p>18 versus Tempur Sealy; do you recall that, sir?</p> <p>19 A Tempur Sealy?</p> <p>20 Q Yes.</p> <p>21 A I didn't think it was Tempur Sealy, but...</p> <p>22 Q Do you recall a gentleman by the name</p>	<p style="text-align: right;">11</p> <p>1 A Fine.</p> <p>2 Q First is, of course, you're under oath.</p> <p>3 That means you're swearing to tell the truth; you</p> <p>4 understand that, right, sir?</p> <p>5 A Yes, I do.</p> <p>6 Q Okay. And although we are videotaping</p> <p>7 this deposition, as you notice, we are also</p> <p>8 transcribing it. And so for purposes of a record,</p> <p>9 although the camera may pick up a nod or a shrug</p> <p>10 or something like that, if you can give your</p> <p>11 answers in an audible form, it would be much</p> <p>12 appreciated. Okay?</p> <p>13 A Yes, I will.</p> <p>14 Q Excellent. Excellent. From time to time,</p> <p>15 Mr. Toft may object. In most circumstances,</p> <p>16 you're still going to have to answer the question,</p> <p>17 unless he instructs you otherwise. Okay?</p> <p>18 A Okay.</p> <p>19 Q In addition to that, feel free, if you</p> <p>20 need a break, we'll take a break as you need them.</p> <p>21 However, the one thing I'd ask is, if we've got a</p> <p>22 question pending, to answer the question first and</p>
<p style="text-align: right;">10</p> <p>1 of -- well, let's see. But you recall giving more</p> <p>2 than one deposition in 2016; is that correct?</p> <p>3 A I've given more than one deposition. I</p> <p>4 just don't remember the dates.</p> <p>5 Q Okay. And those depositions, were they</p> <p>6 regarding one of the patents that you are a named</p> <p>7 inventor on?</p> <p>8 A Yes.</p> <p>9 Q Okay. Besides those two depositions, have</p> <p>10 you given any depositions since that time and</p> <p>11 today?</p> <p>12 A Not that --</p> <p>13 MR. TOFT: Object to form.</p> <p>14 A Not that I know of.</p> <p>15 BY MR. BEAR:</p> <p>16 Q Okay. Have you given any type of sworn</p> <p>17 testimony in a proceeding between that time and</p> <p>18 today?</p> <p>19 A Not that I know of.</p> <p>20 Q Okay. So I want to go through some of the</p> <p>21 ground rules, although you probably heard them</p> <p>22 before, about the deposition. Okay?</p>	<p style="text-align: right;">12</p> <p>1 then we'll take the break. Okay?</p> <p>2 A That sounds fine.</p> <p>3 Q All righty. Is there any reason why you</p> <p>4 can't testify truthfully today, sir?</p> <p>5 A No.</p> <p>6 Q Okay. So I am going to hand you what has</p> <p>7 previously been marked as Exhibit 2056 in the -514</p> <p>8 proceeding. And do you recognize this document,</p> <p>9 sir?</p> <p>10 A (Reviewing.) Yes, I do.</p> <p>11 Q Okay. And what is this document?</p> <p>12 A "Declaration of Paul Mahoney in Support of</p> <p>13 Patent Owner's Response."</p> <p>14 Q Okay.</p> <p>15 MR. BEAR: Can we get a stipulation on the</p> <p>16 record that other than a different exhibit number,</p> <p>17 this is the same declaration that has been filed</p> <p>18 in the other IPR proceedings, Counsel?</p> <p>19 MR. TOFT: Yes, that's fine. I believe</p> <p>20 the date, the signed date is different, as well,</p> <p>21 but other than that...</p> <p>22 MR. BEAR: Okay.</p>

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<p style="text-align: right;">13</p> <p>1 BY MR. BEAR: 2 Q So as I ask you questions about this, 3 although I have one of these, it would equally 4 apply to all three of your declarations. Okay? 5 A (Witness nods in affirmative.) 6 Q All righty. Did you draft this document 7 yourself? 8 A (Reviewing.) Which portion? 9 Q Any portion of the document? 10 A I drafted my CV. 11 Q Okay. Beyond that, any other portions did 12 you draft yourself? 13 A No, I did not. 14 Q Okay. Who did prepare the draft for you? 15 A I think it was Liz. 16 Q Liz, Elizabeth Patton? 17 A I can't remember her last name. 18 MR. TOFT: If it's the person that we were 19 just meeting with, then that is her last name. 20 THE WITNESS: Okay. 21 A Yes. 22 BY MR. BEAR:</p>	<p style="text-align: right;">15</p> <p>1 Q Okay. I notice, as well, in paragraph 2, 2 you talk about your educational background. You 3 have a BS in science in electrical engineering; is 4 that correct? 5 A Yes, I do. 6 Q And you also have a master's in biomedical 7 engineering from Southern Methodist; is that 8 correct? 9 A Yes, it is. 10 Q What is biomedical engineering? 11 A It kind of builds on engineering 12 principles and also biology. 13 Q Biology. So what are some of the 14 applications that a biomedical engineering 15 discipline would address? 16 A It all would depend on what your specialty 17 is. 18 Q What was your specialty? 19 A Mine was more general. 20 Q So what sorts of problems would you work 21 on as a biomedical engineer? 22 A It all depended on the company that I</p>
<p style="text-align: right;">14</p> <p>1 Q Okay. And did you make any changes to the 2 draft that she provided to you? 3 A Yes, I did. 4 Q Okay. Did Ms. Patton consult you prior to 5 providing a draft of this document to you, as in, 6 like, a telephone conference or an in-person 7 meeting? 8 MR. TOFT: And I'm just going to instruct 9 you, to the extent you can answer the question 10 without revealing the content of the 11 conversations, you can answer. Please don't -- 12 A Yes, I did. 13 BY MR. BEAR: 14 Q Okay. I'd like to talk about some of the 15 statements you make in this document. It says 16 that you were employed, in paragraph 3, as a 17 "Senior Product Design Engineer from June 1995 to 18 July 2011"; do you see that, sir? 19 A Yes, I do. 20 Q Okay. And that was at Sleep Number 21 Corporation; is that correct? 22 A That is correct.</p>	<p style="text-align: right;">16</p> <p>1 would work for and what my role was in the 2 company. 3 Q Okay. After you got that degree, what was 4 the first company you worked for? 5 A I worked for a hospital. 6 Q Okay. And were you employed as an 7 engineer for the hospital or in a different 8 capacity? 9 A A different capacity. 10 Q What was your capacity? 11 A Respiratory therapist. 12 Q Okay. And then how long did you work at 13 that hospital for, approximately? 14 A Three or four years, I think. 15 Q Okay. And then what did you do? 16 A I worked for 3M. 17 Q Did you work as an engineer for 3M? 18 A Yes, I did. 19 Q What sorts of problems or products did you 20 work on at 3M? 21 A Designing a neonatal intensive care 22 ventilator.</p>

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