

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN NATIONAL MANUFACTURING )  
INC., )  
                  Petitioner, )  
          vs. )  
SLEEP NUMBER CORPORATION, f/k/a )  
SELECT COMFORT CORPORATION, )  
                  Patent Owner. )

Case: IPR2019-00514 (Patent No. 5,904,172)

DEPOSITION OF  
ROBERT GIACHETTI, Ph.D., P.E.  
Friday, February 28, 2020

Reported by:

ELIA E. CARRIÓN, CSR, RPR, CRR, CRC

Job No. 27033

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<p>1 2 3 The deposition of ROBERT GIACHETTI, 4 Ph.D., P.E., called as a witness herein for 5 examination, taken pursuant to the Federal Rules of 6 Civil Procedure of the United States District Courts 7 pertaining to the taking of depositions, taken 8 before ELIA E. CARRIÓN, CSR, RPR, CRR, CRC, CSR No. 9 084.004641, a Certified Shorthand Reporter of said 10 state, at Fox Rothschild LLP, 321 North Clark 11 Street, Suite 1600, Chicago, Illinois, on Friday, 12 the 28th day of February, 2020, at 8:57 A.M. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Giachetti Declaration of Robert 8/23 2 Exhibit 15 Giachetti, Ph.D., in Support 3 of Petitioner's Reply to 4 Patent Owner's Response 5 Giachetti Deposition of 15/3 6 Exhibit 16 Robert Giachetti, Ph.D., 7 P.E., Volume I, dated October 8 7, 2019 9 Giachetti Compilation of the Claim 21/5 10 Exhibit 17 Chart Exhibits Attached to 11 Dr. Abraham's Report 12 Giachetti Declaration of Dr. William C. 47/6 13 Exhibit 18 Messner in Support of Patent 14 Owner's Response 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 INDEX 2 3 EXAMINATION 4 WITNESS Page 5 ROBERT GIACHETTI, Ph.D., P.E. 6 By MS. NATH 6 7 By MR. ELLIOTT 116 8 EXHIBITS 9 Number Pg/Ln 10 previously Opening Expert Report of 7/24 11 marked Dr. Robert Giachetti in 12 Giachetti Support of Petitioner 13 Exhibit 1 American National 14 Manufacturing, Inc.'s 15 Petition for Inter Partes 16 Review of U.S. Patent 17 5,904,172 18 previously 8/11 19 marked 20 Giachetti Curriculum Vitae of Robert 21 Exhibit 2 Giachetti, Ph.D., P.E. 22 previously 30/18 23 marked 24 Giachetti United States Patent No. 25 Exhibit 4 5,904,172</p>	<p>1 PRESENT: 2 3 SPENCER FANE LLP 4 (1000 Walnut Street, Suite 1400 5 Kansas City, Missouri 64106 6 Tel: 816.292.8150 7 Fax: 816.474.3216 8 kelliott@spencerfane.com), by: 9 MR. KYLE L. ELLIOTT, ESQ. 10 appeared on behalf of the Petitioner; 11 12 FOX ROTHSCHILD LLP 13 (Campbell Mithun Tower 14 222 South Ninth Street, Suite 2000 15 Minneapolis, Minnesota 55402-3338 16 Tel: 612.607.7250 17 Fax: 612.607.7100 18 anath@foxrothschild.com), by: 19 MS. ARCHANA NATH, ESQ. 20 appeared on behalf of the Patent Owner. 21 22 23 24 25</p>

1 MS. NATH: Before I forget, Mr. Toft might call  
2 in at some point today.  
3 MR. ELLIOTT: Okay.  
4 MS. NATH: Because he has, you know, nothing  
5 else going on.  
6 MR. ELLIOTT: Nothing urgent, yeah. No worries  
7 there. That's fine.  
8 ROBERT GIACHETTI, Ph.D., P.E.,  
9 called as a witness, having been first duly sworn,  
10 was examined and testified as follows:  
11 EXAMINATION  
12 BY MS. NATH:  
13 Q. Good morning, Dr. Giachetti. How are  
14 you?  
15 A. I'm good. How are you?  
16 Q. I'm doing well. Thank you.  
17 And you and I have been in a deposition  
18 together before; correct?  
19 A. That's right.  
20 Q. And you know the deposition rules?  
21 A. That's right.  
22 Q. Just a reminder to speak slowly for the  
23 court reporter. Okay?  
24 A. Okay.  
25 Q. And let me finish answering my questions

1 before you respond.  
2 A. Okay.  
3 MR. ELLIOTT: Asking them. You said finish  
4 answering them.  
5 MS. NATH: Oh, yes. I -- it actually says that  
6 on my outline. It says answering.  
7 Q. Yes, let me finish asking my questions  
8 before you respond.  
9 A. Okay. Either way, okay.  
10 Q. And you understand you're under oath?  
11 A. That's right.  
12 Q. Any reason you cannot testify truthfully  
13 and accurately today?  
14 A. No.  
15 Q. You previously submitted a declaration in  
16 this case. Before -- you submitted an early  
17 declaration in this case. Do you remember, your  
18 first declaration?  
19 A. Yes. Yes, I do.  
20 Q. I'm going to hand you what was marked as  
21 Exhibit 1 in your last deposition.  
22 (WHEREUPON, a certain document was  
23 previously marked Giachetti  
24 Exhibit 1, for identification.)  
25 Q. Is that the first declaration that you

1 submitted in this case?  
2 A. This looks like it.  
3 Q. And then I'm giving you what was  
4 previously marked Exhibit 2, and that was your CV as  
5 part of your declaration; correct?  
6 A. Yes.  
7 Q. Has anything changed with respect to your  
8 CV in Exhibit 2?  
9 (WHEREUPON, a certain document was  
10 previously marked Giachetti  
11 Exhibit 2, for identification.)  
12 A. No.  
13 Q. For Exhibit 1, your original declaration,  
14 that was submitted in support of petitioner's  
15 petition for inter partes review; correct?  
16 A. Correct, yes.  
17 Q. Now, you've submitted a second  
18 declaration in this case; right?  
19 A. Yes.  
20 Q. I'm going to hand you what's now been  
21 marked as Exhibit 15.  
22 (WHEREUPON, a certain document was  
23 marked Giachetti Exhibit 15, for  
24 identification, as of  
25 February 28, 2020.)

1 Q. And this is Exhibit 1069 in  
2 IPR2019-00514. Is this the declaration that you  
3 submitted in support of petitioner ANM's reply to  
4 the patent owner's response?  
5 A. Pages are sticky here. Yeah. It -- it  
6 appears to be that declaration, yes.  
7 Q. And what did you review in preparing this  
8 declaration?  
9 A. So this declaration, I believe I  
10 rereviewed the documents for the most part, give or  
11 take, the same documents that went into the first  
12 declaration; and then in addition to that, right  
13 before I wrote this, I was provided with the Duval  
14 deposition, and so I reviewed that, and its exhibits  
15 in writing this report here. And I believe I also  
16 reviewed -- there was a Shafer deposition that I  
17 skimmed over in preparation for this report as well.  
18 Q. A Shafer deposition?  
19 A. Yes.  
20 Q. And that's the first time you looked at  
21 this Shafer deposition?  
22 A. Correct. Both the Duval and Shafer were  
23 new to me when I wrote this.  
24 Q. And is the Shafer deposition something  
25 that you reference in your report anywhere?

1 A. I believe I mention Shafer in here in  
2 more of like a passing where I say -- I'm trying to  
3 remember where it is. I'm pretty sure that I do  
4 mention it in here.  
5 Q. Did you review the patent owner's  
6 response? Why don't you take a look at paragraph 2.  
7 A. Yes. I did review a number of documents  
8 here, and; you know, those filings were part of that  
9 review.  
10 Q. So you would have reviewed the patent  
11 owner's actual response brief in this case?  
12 A. I had it, and I know that I looked  
13 through it. I -- I don't recall that I read it,  
14 you know, with the scrutiny that I gave,  
15 for example, Dr. Messner's report.  
16 Q. So you did review Dr. Messner's report in  
17 preparation for this declaration?  
18 A. Yeah, yeah. I would say that most of  
19 this report is directed as kind of a rebuttal to  
20 what he wrote.  
21 Q. Is the report a rebuttal to any other  
22 witnesses in the case?  
23 MR. ELLIOTT: Objection. Foundation. Form.  
24 A. I would say that it's a reemphasis of  
25 ideas that I had previously presented and then there

1 were specific areas that I rebutted in here. I  
2 don't recall off the top of my head if I discussed  
3 specifically other parties. I know that I reference  
4 Dr. Abraham's report in here, and I think that those  
5 are the focal points.  
6 Q. So is your report in rebuttal of  
7 Dr. Abraham's opinions, then?  
8 A. I incorporated what I read in his report.  
9 I don't know that I am rebutting him directly. This  
10 is primarily Dr. Messner.  
11 Q. Has your understanding of the law changed  
12 at all since your initial declaration?  
13 A. No.  
14 Q. So this declaration you said is in  
15 support of the petitioner's reply brief to the  
16 patent owner's response; correct?  
17 A. That's correct.  
18 Q. Did you review petitioner's reply?  
19 A. So I know that they relied on this  
20 document to help support their document, the  
21 petitioner. So I didn't -- I saw some parts of it  
22 that they had in preparation, but I didn't see the  
23 completed document while I was writing this.  
24 Q. Have you since seen the completed  
25 document?

1 A. Yes, I believe I have.  
2 Q. Do you know if it was before or after the  
3 document was filed?  
4 A. After the filing.  
5 Q. And you understand that your reply  
6 declaration and your original declaration are cited  
7 in support of arguments in that reply brief?  
8 A. Yes.  
9 Q. Do you agree with the contents of the  
10 reply brief?  
11 MR. ELLIOTT: Objection to form.  
12 A. Yes.  
13 Q. Is there anything that you disagree with  
14 that's in the reply brief?  
15 MR. ELLIOTT: Same objection.  
16 A. Not -- not that I recall. I didn't  
17 review it in detail before coming here today.  
18 Q. Let's take a look at Exhibit 15, your  
19 reply declaration. In paragraph 3, you say that  
20 Dr. Messner agrees with you on the background of a  
21 POSITA, but you disagree upon their capabilities?  
22 A. That's right.  
23 Q. Can you explain that?  
24 A. So he in his declaration says that he  
25 accepts the background of the POSITA that I've put

1 forward, but then as you go through his report,  
2 there are things that he doesn't believe the PHOSITA  
3 is capable of, and that's the basis for me saying  
4 that.  
5 Q. Is that something that you've explained  
6 in your report?  
7 A. I believe so.  
8 Q. If it's not -- are there -- do you  
9 believe that there are opinions that you have about  
10 that that are not in your report?  
11 MR. ELLIOTT: Objection to form.  
12 A. I would say that where I've -- where I  
13 have disagreements on that topic, it's contained  
14 within my declarations.  
15 Q. Let's look at paragraph 4. One of the  
16 things you say in paragraph 4 of your declaration is  
17 that Dr. Messner contradicts analysis provided by  
18 another expert, John Abraham. Do you see that?  
19 A. I see that.  
20 Q. And you discuss manifolds in the products  
21 that Dr. Abraham analyzed; right?  
22 A. That's right.  
23 Q. You and I discussed at your last  
24 deposition manifolds; right?  
25 A. Yeah. I know that topic came up.

1 Q. Do you recall that we discussed that  
2 you -- you told me that an enclosure portion is  
3 primarily the manifold without a cover?

4 MR. ELLIOTT: Objection to form.

5 A. I don't recall that specifically, but I  
6 recall something along the lines of saying if you  
7 put like a store-bought manifold on a table and you  
8 put the valve enclosure assembly on a table, that a  
9 PHOSITA would say that they're both manifolds.

10 Q. Okay.

11 A. I remember that we had a long discussion  
12 about cookie jars and enclosure portions and things  
13 like that.

14 Q. Do you recall talking to me and  
15 testifying that the enclosure portion of the  
16 manifold in the '172 would be multiplaned?

17 MR. ELLIOTT: Objection to form.

18 A. I do remember discussing that with you in  
19 terms of that it may -- the enclosure is formed when  
20 all the pieces are together and that because we use  
21 the word "portion," that that indicates that there  
22 are pieces of an assembly that form the full  
23 enclosure.

24 Q. Okay. So that's a little different than  
25 what I'm asking you.

1 MS. NATH: So mark that as 16.  
2 (WHEREUPON, a certain document was  
3 marked Giachetti Exhibit 16, for  
4 identification, as of  
5 February 28, 2020.)

6 Q. So this is your deposition transcript.  
7 Excuse me. It looks like I only have Volume 1.

8 MS. NATH: Kyle, I can update it with Volume 2  
9 if you want, but I don't know that I'm going to use  
10 Volume 2 right now. So...

11 MR. ELLIOTT: That's fine.

12 Q. This is Volume 1 of your prior deposition  
13 transcript.

14 A. Okay.

15 Q. And if you look at page 111, line 12, let  
16 me know when you're there.

17 A. Page 112?

18 Q. Page 111.

19 A. Page 111. Okay.

20 Q. Sorry. Line 12.

21 A. Line 12.

22 Q. Actually, you can start with line 9.

23 A. Okay.

24 Q. So on line 9, you say: "What they see  
25 the enclosure portion as, it's primarily the

1 manifold for this.

2 "Now, the manifold in industry is  
3 typically the block or solid part where everything  
4 else affixes to. So for this, the enclosure portion  
5 is basically for the most part that block. But it  
6 won't function as a manifold and it won't function  
7 as the valve enclosure assembly until you put that  
8 back cover on."

9 Did I read that correctly?

10 A. I see that, yes.

11 MR. ELLIOTT: I'll enter an objection as to  
12 scope.

13 Q. And on page 144 of your deposition,  
14 starting at line 14.

15 A. Page 144, line 14.

16 Q. Yeah.

17 A. Okay.

18 Q. I ask you: "So an enclosure portion  
19 would be something that would be more than one  
20 plane, I think we discussed that already?"

21 "That's right" was your answer.

22 MR. ELLIOTT: Objection. Scope.

23 A. Yes, that's what it says here.

24 Q. And on page 145, I ask you whether the  
25 enclosure portion describes all sides of the

1 enclosure except for where there's a rear cover  
2 opening that's defined opposite the front face. And  
3 you respond, "That's right." Do you see that?

4 MR. ELLIOTT: Objection to form and scope.

5 A. Can you say -- show me where it is?

6 Q. Sure. That -- that's starting on line 8.

7 A. Line 8, okay. Yeah, yeah. I mean, it  
8 says that.

9 I think overall there we talked about  
10 manifolds for way more than three or -- pages. I'm  
11 pretty sure it probably encompassed something like  
12 20 pages in here, and the takeaway is that the  
13 enclosure as a whole is the manifold, and that's  
14 what I recall that the whole -- if you put  
15 everything that I said about manifolds in here, that  
16 that's the takeaway, is that the whole enclosure  
17 assembly is the manifold.

18 Q. Okay. But the pages that we just read,  
19 they specifically refer to the enclosure portion as  
20 disclosed in the '172; correct?

21 MR. ELLIOTT: Objection to form and scope.

22 A. Sure, those portions that you just  
23 highlighted discuss the enclosure portion.

24 Q. And does Dr. Abraham ever identify a  
25 structure as an enclosure portion that doesn't

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