

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

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AMERICAN NATIONAL MANUFACTURING, INC.

Petitioner,

v.

SLEEP NUMBER CORPORATION, f/k/a

SELECT COMFORT CORPORATION

Patent Owner.

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Case IPR: IPR2019-00514  
U.S. Patent 5,904,172

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Case IPR: IPR2019-00497  
U.S. Patent 8,769,747

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Case IPR: IPR2019-00500  
U.S. Patent 9,737,154

DEPOSITION OF MATTHEW R. LYNDE

February 18, 2020

Redwood Shores, California

REPORTED BY:

LYNNE M. LEDANOIS, CSR 6811

Job No: 27003

TransPerfect Legal Solutions

1 DEPOSITION OF MATTHEW R. LYNDE  
 2 DATE: Tuesday, February 18, 2020  
 3 TIME: 8:17 a.m.  
 4 LOCATION: Lewis Roca Rothgerber Christie  
 203 Redwood Shores Parkway  
 Redwood Shores, California 94065

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3 Exhibit 1	Document headed, G1 Blower, G1 Pump, etc., with years 1998-2018, ANM100133414-422;	27
7 Exhibit 2	Declaration of Matthew R. Lynde, Ph.D., in Support of Petitioner's Reply to Patent Owner's Response dated 1/22/20;	56
12 Exhibit 3	Document headed, ANM Accused Controller Unit Sales, Before and After Correction;	90
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20 Exhibit 5	Declaration of Carl G. Degen in Support of Owner's Response;	108

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Redwood Shores, California  
Tuesday, February 18, 2020  
8:17 a.m.

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MATTHEW R. LYNDE,

having been duly sworn, testified as follows:

## EXAMINATION

BY MR. LOFT:

Q Will you please state your name for the record?

A Matthew R. Lynde.

Q And Lynde? Kyle told us that and we've been working under that assumption but it's -- Lynde is how I would normally pronounce it.

A It's Lynde.

Q You've been deposed before?

A I have.

Q So you're generally aware of the deposition rules?

A I generally am, yes.

Q You'll need to give verbal answers, not a nod of the head.

Do you understand that?

A I do.

Q And we can take a break at any time. But I would ask that you answer any pending question before we do so.

A I understand.

Q And if there's any questions that I ask that you don't understand, you'll ask for clarification?

A I will.

Q Is there any reason that you're unable to provide truthful testimony under oath today?

A No.

Q There's no -- you don't have any medications -- not on any medications that would alter --

A No, I'm not.

Q And do you have any devices on you that would allow you to communicate with others?

A I've got my cell phone.

Q Okay. And that's -- anything else?

A No.

Q What did you do to prepare for today's deposition?

A I reviewed the declarations that have been filed by me and Mr. Miller and Mr. Degan, some of the supporting materials in those

declaration and I met with counsel.

Q What supporting materials did you review?

A There were referred to, especially in my declaration, supporting data in terms of advertising costs, for example. So I looked at the supporting documents in my declaration.

Q And those documents are specifically described in your declaration?

A Yes, they are.

Q Did you identify any documents not specifically described in your declaration?

A No, I don't think so. I reviewed the declaration.

Q Did you review any supplemental declarations submitted by yourself?

A By "declarations" I mean both the original declarations and the supplemental declarations.

Q Is that true of Mr. Lynde -- sorry, of Mr. Miller?

A Of Mr. Miller, yes.

Q And Mr. Degan?

A Correct.

Q Other than Mr. Elliott here today, did

1 you discuss your deposition with anyone?

2 A Well, at the meeting with Mr. Elliott  
3 yesterday on the phone call was also two other  
4 counsel from Spencer Fane.

5 Q And who were those counsel?

6 A They were Mark Thornhill and Brian --  
7 I'm blanking on his name.

8 Q Brian Bear?

9 A Yes.

10 Q Anyone else that you discussed your  
11 deposition -- did you discuss your deposition  
12 with anyone other than those three?

13 A No. My staff were also in attendance  
14 at that meeting.

15 Q And what were the names of the staff  
16 that were in attendance?

17 A Ms. Liu and Mr. Rondeau.

18 Q Anyone else?

19 A No, that was it.

20 Q Can you give me a quick overview of  
21 your education?

22 A Yes. I have an undergraduate and  
23 Ph.D. doctorate in economics from the University  
24 of California at Berkeley.

25 Q Okay. And when did you receive that?

1 A The Ph.D. was in '88 and the  
2 undergraduate degree in '79.

3 Q And then after you got your Ph.D. from  
4 Berkeley, what did you do?

5 A I was a professor at the City  
6 University of New York for five or six years.

7 Q And what were you a professor of?

8 A Economics.

9 Q Okay. And then after that, what did  
10 you do?

11 A After that I joined PriceWaterhouse,  
12 the international consultancy, and worked as an  
13 economist in that firm.

14 Q And how long did you do that?

15 A That was about nine years.

16 Q So until 2000?

17 A Until about 2000. I think it was 2001  
18 that I joined Cornerstone Research.

19 Q And what is your role at Cornerstone  
20 Research?

21 A I was the founder of the San Francisco  
22 office. I'm on a number of management  
23 committees. I'm the head of the intellectual  
24 property practice, and so I have general duties  
25 tease like that at the firm.

1 Q And what are the general duties as  
2 head of the intellectual practice?

3 A I'm responsible for developing experts  
4 and developing methods and techniques and  
5 supporting experts in usually litigation  
6 assignments.

7 Q Is your primary role working with  
8 intellectual property litigation?

9 A That's my primary role, yes.

10 Q What other duties do you have?

11 A I'm on some of the marketing  
12 committees and one of the compensation  
13 committees. So generally administrative duties.

14 Q Okay. Have you given testimony in  
15 other cases prior to this?

16 A Yes.

17 Q And are you generally -- do you  
18 generally -- "represent" is the wrong word.

19 But are you generally employed by the  
20 patent owner or the challenger?

21 A I've been employed by both types of  
22 parties over the years.

23 Q Are the cases that you have testified  
24 in generally intellectual property cases?

25 A Generally, yes.

1 Q What percentage of the cases that you  
2 worked on are IP?

3 A Certainly the majority, but I don't  
4 know an exact percentage. I sometimes testify  
5 about other matters.

6 Q More than 50 percent?

7 A Yes, I'm sure that's true.

8 Q More than 75 percent?

9 A I really don't know.

10 Q Okay. Has your testimony ever been  
11 subject to a motion to exclude?

12 A I believe so, yes.

13 Q Has any motion to exclude ever been  
14 granted?

15 MR. ELLIOTT: Objection to form.

16 THE WITNESS: Yes, I think there's a  
17 couple of occasions.

18 BY MR. LOFT:

19 Q On what occasions has your testimony  
20 been excluded?

21 A Of what I'm aware, there was a case  
22 involving offshore production, offshore holding  
23 company for a patent. And there was a question  
24 as to whether the reason for the counterparty to  
25 change their sales practice was due to

1 competition from my client.

2 And so the evidence clearly showed  
3 that, but the president who did not have access  
4 to the information I had was of the view that  
5 that was the case.

6 Since I never presumed, of course, to  
7 read his mind, I was not offering any testimony  
8 about his state of mind. But that was excluded.

9 Q What was the basis for exclusion?

10 A That I wouldn't -- well, it was  
11 excluding something that I was not going to  
12 testify and hadn't testified to. So it's kind  
13 of a moot point.

14 Q Any other instances where your  
15 testimony has been excluded?

16 A I think there may be one or two  
17 others. I don't have a list in mind.

18 Q Do you remember the basis for the  
19 exclusion in the one or two other?

20 A Well, these have never been about  
21 qualifications. The one other I can remember at  
22 the moment is a methodology question having to  
23 do with the application to FRAND licensing.

24 Q So there was a question with the  
25 methodology that you employed?

1 A Correct.

2 Q And what case was that?

3 A I'm going to have to refresh my memory  
4 from my C.V. It was several years ago. I think  
5 it was Metaswitch.

6 Q Metaswitch?

7 A Metaswitch, yes.

8 Q Any other instances where your  
9 testimony has been excluded based upon the  
10 methodology that you used?

11 A Not that I can recall.

12 Q In your declaration you relied on  
13 discussions with Craig Miller; correct?

14 A I do.

15 Q How many discussions with Mr. Miller  
16 did you have?

17 A Several. Maybe three or four.

18 Q When did you talk to Mr. Miller? When  
19 were these conversations?

20 A These were over the several weeks  
21 prior to my declarations.

22 Q What did you and Mr. Miller discuss?

23 A Well, we discussed his role, his  
24 business, the company's history, the RF  
25 technology, his history in the mattress aspect

1 of applying his technology.

2 The finances and sales, impacts on  
3 sales, things like that.

4 Q And when you say RF technology, what  
5 do you mean by that?

6 A I understand that one of the  
7 technologies that he has at ANM has to do with  
8 radio-frequency welding of thermoplastics, for  
9 example.

10 Q Okay. Is it your understanding that  
11 that technology is at issue in this case?

12 A It is not.

13 Q Did Mr. Miller provide any documents  
14 to you during these conversations?

15 A He did not. He did supply some  
16 documents to counsel.

17 Q Okay. And are you aware as to whether  
18 or not those documents were produced?

19 A I'm not personally aware. I  
20 understand the ones that were provided to me by  
21 counsel were produced because I referred to them  
22 in my declaration.

23 Q And you also had -- is there anything  
24 else that you and Mr. Miller discussed?

25 MR. ELLIOTT: Objection, could call

1 into privilege areas about discussions with  
2 counsel. But you're certainly permitted to  
3 discuss anything you relied on as a basis  
4 and is not an attorney-client communication.

5 THE WITNESS: No, those were the main  
6 things we talked about was the business and  
7 the sales.

8 BY MR. LOFT:

9 Q Okay. In discussing the impact -- you  
10 mentioned that you and Mr. Miller discussed  
11 sales and the impact on sales; correct?

12 A Yes.

13 Q When discussing that, did you rely on  
14 what Mr. Miller stated impacted sales?

15 A In part, yes, I did. But I also  
16 looked at all of the objective data that was  
17 provided to me about sales and sales trends.

18 Q And what was the objective data that  
19 was provided to you about sales and sales  
20 trends?

21 A There were unit sales records that  
22 Mr. Degan also relied on. There were  
23 advertising expenditures. There were the  
24 specifics with respect to Google Ad words.

25 So I looked at all of that data in

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