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Transcript of Robert Nunn

Date: December 4, 2019

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

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Robert Nunn
Conducted on December 4, 2019

<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD 3 ----- 4 AMERICAN NATIONAL IPR2019-00497 5 MANUFACTURING INC., IPR2019-00500 6 Petitioner, IPR2019-00514 7 v. 8 SLEEP NUMBER CORPORATION U.S. PATENT 8,769,747 9 f/k/a SELECT COMFORT U.S. PATENT 9,737,154 10 CORPORATION, U.S. PATENT 5,904,172 11 Patent Owner. 12 ----- 13 VIDEO DEPOSITION OF 14 ROBERT NUNN 15 MINNEAPOLIS, MINNESOTA 16 WEDNESDAY, DECEMBER 4, 2019 17 9:06 A.M. 18 19 20 JOB NO.: 275193 21 PAGES: 1 - 73 22 REPORTED BY: PATRICK J. MAHON, RMR, CRR</p>	<p>1 A P P E A R A N C E S 2 3 REPRESENTING THE PETITIONER: 4 Mr. Brian T. Bear 5 Attorney at Law 6 Spencer Fane LLP 7 1000 Walnut Street, Suite 1400 8 Kansas City, Missouri 64106-2140 9 bbear@spencerfane.com 10 11 12 REPRESENTING THE PATENT OWNER: 13 Ms. Elizabeth A. Patton 14 Attorney at Law 15 Fox Rothschild LLP 16 222 South 9th Street, Suite 2000 17 Minneapolis, Minnesota 55402 18 epatton@foxrothschild.com 19 20 21 * * * * * 22</p>
<p>1 DEPOSITION OF ROBERT NUNN, HELD AT THE 2 OFFICES OF: 3 4 5 FOX ROTHSCHILD LLP 6 222 SOUTH 9TH STREET 7 MINNEAPOLIS, MINNESOTA 55402-3338 8 9 10 11 12 13 Pursuant to Notice, before Patrick J. 14 Mahon, Notary Public in and for the County of 15 Hennepin, State of Minnesota. 16 17 18 19 20 21 * * * * * 22</p>	<p>1 I N D E X 2 3 EXAMINATION: 4 BY MR. BEAR - PAGES 7 and 70 5 BY MS. PATTON - PAGE 66 6 7 EXHIBITS REFERRED TO: 8 NUMBER/DESCRIPTION PAGE 9 Exhibit 1001..... 18 10 Patent No.: 5,904,172 11 (17 pages) 12 Exhibit 1001..... 29 13 Patent '497 14 Exhibit 1001..... 29 15 Patent '500 16 Exhibit 2032..... 11 17 Declaration of Robert Nunn In 18 Support Of Patent Owner's Response 19 (4 pages) 20 21 22 (continued...)</p>

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<p>1 EXHIBITS, continued: 2 3 EXHIBIT/DESCRIPTION PAGE 4 Exhibit 2079..... 24 5 Historical FCS Timeline and 6 additions 7 SN_0021013 - 033 8 9 10 11 12 13 14 15 16 17 18 19 20 * * * * * 21 22</p>	<p>5</p>	<p>1 Petitioner, American National Manufacturing, 2 Incorporated. 3 MS. PATTON: Elizabeth Patton on behalf of 4 the Patent Owner, Sleep Number Corporation. 5 THE VIDEOGRAPHER: Thank you. 6 The court reporter today is Patrick Mahon, 7 representing Planet Depos. 8 Would the court reporter please swear in 9 the witness. 10 (The oath was administered by the 11 stenographer.) 12 WITNESS RESPONSE: Yes, I do. 13 ROBERT NUNN, 14 a witness in the above-entitled proceedings, after 15 having been first duly sworn, deposed under oath 16 as follows: 17 EXAMINATION 18 BY MR. BEAR: 19 Q Good morning, Mr. Nunn. Could you state 20 your name for the record. 21 A Yes. Robert Nunn. 22 Q Okay. And where do you live, Mr. Nunn?</p>	<p>7</p>
<p>1 PROCEEDINGS 2 WHEREUPON, the following proceedings were 3 duly had: 4 THE VIDEOGRAPHER: Good morning. Here 5 begins disk number 1 in the videotaped deposition 6 of Robert Nunn in the matter of American National 7 Manufacturing, Inc. versus Sleep Number 8 Corporation, et al., in the United States Patent 9 and Trademark Office, before the Patent Trial and 10 Appeal Board, the following case numbers, 11 IPR2019-00497, IPR2019-00500, and IPR2019-00514. 12 Today's date is Wednesday, December 3rd 13 (sic), 2019. The time on the video monitor is 14 9:06 a.m. 15 Your videographer today is Kyle Stolis, 16 representing Planet Depos. 17 This video deposition is taking place at 18 the law office of Fox Rothschild LLP in 19 Minneapolis, Minnesota. 20 Would counsel please voice identify 21 themselves and state whom they represent. 22 MR. BEAR: Brian Bear on behalf of</p>	<p>6</p>	<p>1 A I live in Eden Prairie, Minnesota. 2 Q Okay. Have you ever had your deposition 3 taken before? 4 A Yes. 5 Q Okay. How long ago did you have it taken? 6 A I don't remember the exact year. It was 7 three to five years ago. 8 Q And what was the general context of that 9 deposition? 10 A It was a very specific topic on FCC 11 markings and regulations. 12 Q Was that in connection with your 13 employment with Sleep Number? 14 A Yes. 15 Q Okay. And did you testify in your 16 personal capacity or on behalf of the company? 17 A On behalf of the company. 18 Q Do you recall what the case name was that 19 that testimony was taken in? 20 A I don't. If I recall correctly, it would 21 be a case with Dream Number -- 22 Q Dream Number? Okay.</p>	<p>8</p>

<p style="text-align: right;">9</p> <p>1 A – I believe.</p> <p>2 Q Other than the case with Dream Number,</p> <p>3 have you given any other depositions?</p> <p>4 A No.</p> <p>5 Q Okay. As you probably heard during that</p> <p>6 deposition, this is testimony that we're taking</p> <p>7 under oath. You understand that; right, sir?</p> <p>8 A Yes. Correct.</p> <p>9 Q Okay. And just as it's always kind of</p> <p>10 good to get the cobwebs out, I'll just kind of go</p> <p>11 through some of the ground rules. As you probably</p> <p>12 know, this is a verbal exercise. So although</p> <p>13 we're having a videographer here and it's on</p> <p>14 video, be sure to give any answers that you give</p> <p>15 audibly. You know, a nod of the head may be on</p> <p>16 the video, but it's not something that can really</p> <p>17 be reflected on our written transcript. Okay?</p> <p>18 A Okay.</p> <p>19 Q The other thing, if you could make sure</p> <p>20 that, if you answer uh-huh or uh-uh, to say yes or</p> <p>21 no, because sometimes those can get a little bit</p> <p>22 blurry on the transcript as well. Okay?</p>	<p style="text-align: right;">11</p> <p>1 Q Okay. I'm going to hand you what is</p> <p>2 premarked as Exhibit 2032 in IPR497. Do you</p> <p>3 recognize that, sir?</p> <p>4 A Yes, I do.</p> <p>5 Q And is that your declaration that you</p> <p>6 caused to be filed within this proceeding?</p> <p>7 MS. PATTON: Object to the form as with</p> <p>8 the use of "cause to be filed."</p> <p>9 A I think this -- I think there was a</p> <p>10 revised one. We made some edits to this one, I</p> <p>11 believe.</p> <p>12 BY MR. BEAR:</p> <p>13 Q Okay. But is that the original copy?</p> <p>14 A This is the original copy, yes.</p> <p>15 Q Okay.</p> <p>16 MR. BEAR: And can we have a stipulation</p> <p>17 on the record that this is the same declaration</p> <p>18 filed in each of the proceedings?</p> <p>19 MS. PATTON: Yes, with the exception that</p> <p>20 in the '514 proceeding, the exhibit has a</p> <p>21 different number.</p> <p>22 MR. BEAR: Okay.</p>
<p style="text-align: right;">10</p> <p>1 A Okay.</p> <p>2 Q And if I ever ask you anything that</p> <p>3 doesn't make sense or you need me to rephrase,</p> <p>4 just let me know and I'll do the best I can to try</p> <p>5 to make it as clear as possible. Okay?</p> <p>6 A Sounds good.</p> <p>7 Q All right. Last thing, from time to time</p> <p>8 your counsel may make objections. If there is an</p> <p>9 objection, unless she instructs you otherwise, you</p> <p>10 will still have to answer the question. But</p> <p>11 beyond that, you know, feel free to take breaks if</p> <p>12 you need them. However, I would just ask that you</p> <p>13 finish any questions that are pending before we go</p> <p>14 on a break. Okay?</p> <p>15 A I understand, yeah.</p> <p>16 Q And I don't anticipate we'll have to do</p> <p>17 many breaks today, but we'll go through that.</p> <p>18 So, sir, did you cause to be filed in</p> <p>19 these patent proceedings a declaration entitled</p> <p>20 the "Declaration of Robert Nunn In Support Of</p> <p>21 Patent Owner's Response"?</p> <p>22 A Yes.</p>	<p style="text-align: right;">12</p> <p>1 BY MR. BEAR:</p> <p>2 Q And just for ease of reference, I'll have</p> <p>3 that in front of you and I'll ask you questions</p> <p>4 off of that, and hopefully, that will make</p> <p>5 everything go quicker.</p> <p>6 A Okay.</p> <p>7 Q Sir, how are you currently employed?</p> <p>8 A I work for a company called Future</p> <p>9 Electronics. I am employed as a field</p> <p>10 applications engineer.</p> <p>11 Q Okay. Does Future Electronics have any</p> <p>12 relationship with Sleep Number Corporation?</p> <p>13 A So we are in kind of a sales position.</p> <p>14 Q Okay.</p> <p>15 A So we sell parts, and they are one of our</p> <p>16 customers, yes.</p> <p>17 Q Okay. But Sleep Number Corporation does</p> <p>18 not own Future -- what was the name of it again?</p> <p>19 A Future Electronics.</p> <p>20 Q Future Electronics? They don't own that</p> <p>21 company?</p> <p>22 A That's correct, they do not own them.</p>

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<p style="text-align: right;">13</p> <p>1 Q Okay. You were employed at one time by 2 Sleep Number Corporation? 3 A Yes. Correct. 4 Q And in your declaration, you state that 5 that was from April 2011 to October 2017; is that 6 correct, sir? 7 A Yes. Correct. 8 Q Why did you end up leaving Sleep Number 9 Corporation? 10 A To pursue this field applications 11 engineering position. 12 Q Okay. So you voluntarily left the 13 position? 14 A Yes. Correct. 15 Q Okay. And prior to April 2011, where were 16 you employed, sir? 17 A I was employed at Honeywell. 18 Q Okay. And what did you do at Honeywell? 19 A So I started as an intern in 2004, and I 20 held a -- I'm not exactly sure how many different 21 titles I had there, but it was changing and 22 evolving.</p>	<p style="text-align: right;">15</p> <p>1 still in the hardware group. It was called 2 Guidance and Navigation Center of Excellence. 3 Q Okay. In connection with your duties at 4 Honeywell, did you ever have any interaction with 5 the adjustable air mattress industry? 6 A No. 7 Q How did you come to be employed by Sleep 8 Number Corporation? 9 A I feel it was by chance. 10 Q Okay. 11 A One of my friends that was at Honeywell 12 had left and went to another company, and anyway, 13 he was looking for a new position, he interviewed 14 for a mechanical engineering job at Sleep Number, 15 and I happened to see him at another friend's 16 wedding, and he's, like, "Yeah, they were asking 17 if I knew any electrical engineers that might be 18 interested in a position," and I said, "Yeah, I 19 guess, throw my name in the hat," and then one 20 thing led to another, and I ended up working 21 there. 22 Q So in April 2011, you joined, at the time,</p>
<p style="text-align: right;">14</p> <p>1 Q So from 2004 to 2011, were you employed by 2 Honeywell? 3 A Yes. 4 Q Okay. And I see in your background, you 5 say that you are an electrical engineer; is that 6 correct, sir? 7 A Yes. Correct. 8 Q What kind of educational background do you 9 have? 10 A I have a Master of Science degree in 11 electrical engineering. 12 Q And you have a bachelor's? 13 A Yes. Correct. 14 Q What is your bachelor's in? 15 A Electrical engineering. 16 Q Okay. And can you generally describe what 17 you did at Honeywell? 18 A Yeah. I started out as an intern, working 19 in the test equipment maintenance group. After I 20 graduated, I moved over to a group called GPS 21 Landing Systems as a hardware engineer, developing 22 circuit boards, and after that, I moved into --</p>	<p style="text-align: right;">16</p> <p>1 it was called Select Comfort Corporation; is that 2 correct? 3 A Correct. 4 Q And then it later changed its name to 5 Sleep Number Corporation? 6 A Correct. 7 Q Okay. When you were first hired by Sleep 8 Number Corporation, who was your direct superior? 9 A It would have been Wade Palashewski. 10 Q Okay. Did you have any interactions 11 during that time with Paul Mahoney? 12 A Yes. So it was known that I was going to 13 replace Paul, so he had put in for retirement a 14 few months before I interviewed there, and the 15 goal was for me to start on -- kind of learn a 16 little of the historical information from him, and 17 then he retired a few months later. 18 Q Okay. In paragraph 4 of your declaration, 19 you state that you "have personal knowledge of 20 various Sleep Number patents," and then it lists 21 the three patents at issue in this case. Do you 22 see that, sir?</p>

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