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

Proceeding	92048271
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

RHINO LININGS USA, INC.,)	
Petitioner,)	
)	
vs.)	Cancellation No. 92048271
)	
RAPID RACK INDUSTRIES, INC.,)	
Registrant.)	
)	

**PETITIONER'S BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

**EXHIBITS TO BRIEF IN SUPPORT OF PETITIONER'S MOTION
FOR SUMMARY JUDGMENT CONTINUED**

Exhibit D—Part 1

(an un-redacted version of Exhibit D
has been filed under seal)

EXHIBIT D

(to Petitioner's Brief in Support of its Motion for
Summary Judgment)

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1 PASADENA, CA FRIDAY, SEPTEMBER 26, 2008

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10 Q. Would you state your full name, please?

11 A. Harry Randall Taylor.

12 Q. Morning, Mr. Taylor. As I mentioned earlier,
13 my name is Joseph Dowdy. I'm joined today by my
14 colleague Reed Hollander, but I'll be asking the
15 questions. We're both counsel for Rhino Linings USA,
16 Inc. in this cancellation proceeding. If you don't
17 mind, I'll go over a few ground rules. Basically
18 especially given that it's a telephonic deposition, I'd
19 appreciate it if you'd give oral answers to questions
20 and say yes or no instead of uh-huh or uh-uh. If you
21 need a break at any time feel free to ask, and I'm
22 happy to accommodate. I would just ask that if we're
23 in the -- once I ask a question that you answer it and
24 then we take a break. If you need to speak to your
25 attorney at any point during the deposition, same

1 thing, if you'd kindly just answer the question we're
2 on and then we'll take a break and you can speak to
3 your attorney. If you don't understand a question,
4 please ask me to repeat it and I'm happy to try to
5 rephrase it; and the same if you find the question
6 confusing or if there's any question you have about a
7 question, let me know and I'll try to rephrase it in a
8 way you feel you can answer it. All that sound okay?

9 A. Yeah, that's fine.

10 Q. Okay. And if I may ask, what is your
11 business address?

12 A. 14421 Bonelli, City of Industry, California.

13 Q. Do you live in the City of Industry?

14 A. No, I do not.

15 Q. Where do you live?

16 A. In Whittier, California.

17 Q. How old are you, sir?

18 A. 52.

19 Q. Did you graduate from college?

20 A. No.

21 Q. What year did you graduate from high school?

22 A. '75.

23 Q. From what high school did you graduate?

24 A. Monte Vista High School.

25 Q. Are you currently employed by Rapid Rack

1 Industries, Inc.?

2 A. Yes.

3 Q. Just going forward I'm going to use the term
4 Rapid Rack without the rest of it. You understand I'll
5 be referring to Rapid Rack without the Inc.?

6 A. Yes.

7 Q. What is your position with Rapid Rack?

8 A. Director of operations.

9 Q. How long have you held that position, sir?

10 A. I've got to think here. About a year, year
11 and a half.

12 Q. Did you hold a position with Rapid Rack
13 before that?

14 A. Yes.

15 Q. What position did you hold before that?

16 A. Just before this one?

17 Q. Yes, sir.

18 A. R&D manager.

19 Q. Research and development manager?

20 A. Yes.

21 Q. How long did you hold that position?

22 A. About a year and a half.

23 Q. Did you hold any positions with Rapid Rack
24 before that?

25 A. Yes.

1 Q. What was that position?

2 A. Engineering manager and customer service.

3 Q. Can you give me the approximate dates that
4 you held that position?

5 A. No.

6 Q. You cannot?

7 A. No, not really. I've been with the company
8 for 20 years, so.

9 Q. Did you start with the company right out of
10 high school?

11 A. No.

12 Q. When did you start with the company?

13 A. 1989.

14 Q. 1989. So since that time what positions have
15 you held other than that position, than the ones you've
16 mentioned other than engineering manager, customer
17 service and R&D manager and director of operations?

18 A. From the beginning I started out in outside
19 sales. Within a year or so I took over as inside sales
20 manager.

21 Q. Okay.

22 A. Then I took over as project management
23 manager.

24 Q. Okay.

25 A. Then I took over as engineering manager.

1 Q. Okay.

2 A. And as engineering manager, I was over
3 customer service estimating and project management.

4 Q. Thank you. Have you had any involvement in
5 this litigation as far as responding to written
6 discovery requests or gathering responsive documents?

7 A. Of documents, no.

8 Q. What about responding to any written
9 questions we may have sent to Rapid Rack?

10 MR. ORME: Hold on just a moment, Joe. Can
11 we go off the record for just one second?

12 (Off the record.)

13 MR. DOWDY: Sir, do you understand my
14 question?

15 MR. ORME: You may want to clarify it a
16 little more.

17 THE WITNESS: Yes, please.

18 Q. (BY MR. DOWDY): Let me ask it: First of
19 all, have you been involved in gathering documents in
20 response to written questions that I have submitted on
21 behalf of my client to Rapid Rack?

22 A. Is a --

23 MR. ORME: Objection; that's confusing. Can
24 you restate the question, please. I didn't understand
25 that question, Joe.

1 MR. DOWDY: Okay. Have you seen a document
2 in this litigation referred to as Request for
3 Production of Documents and Things?

4 A. No.

5 Q. As part of this litigation have you been
6 responsible for gathering any documents that were
7 produced in this litigation?

8 A. A, ye- -- just as of last night or so.

9 Q. So before last night you didn't provide any
10 documents --

11 A. No, sir.

12 Q. -- to be produced?

13 A. No.

14 Q. What documents were those?

15 A. Some information on the RR-4805, just a
16 couple screen shots.

17 Q. Have you seen any written questions that have
18 been submitted to Rhino Linings?

19 A. Yeah.

20 Q. I'm sorry -- strike that. Have you seen a
21 document entitled, "Interrogatories to Registrant" as
22 part of this litigation?

23 A. Yes, as of yesterday.

24 Q. Before yesterday you didn't see a document
25 entitled, "Petitioner's First Set of Interrogatories to

1 Registrant?

2 A. No.

3 Q. And you didn't supply any answers to those
4 interrogatories?

5 A. No.

6 Q. Thank you. Do you understand that you're
7 being designated as a company representative of Rapid
8 Rack to give answers for the company today?

9 A. Yes.

10 Q. Madam Court Reporter, if you could pull the
11 envelope marked Rule 30(b)(6) Deposition Notice and
12 mark the -- there's copies in this, mark the contents
13 as Exhibit 1.

14 (Exhibit No. 1 marked.)

15 Q. (BY MR. DOWDY): The court reporter has
16 handed you what we've marked as Exhibit 1, Mr. Taylor.
17 Have you seen this document before today?

18 A. No, I have not.

19 MR. ORME: Do we have a copy for me?

20 MR. DOWDY: There should have been a copy for
21 you.

22 MR. ORME: Okay. Thank you.

23 Q. (BY MR. DOWDY): Are you familiar with what
24 this document is?

25 A. No.

1 Q. I will represent to you that it is a Notice
2 of Deposition for the corporate deposition of Rapid
3 Rack pursuant to this Notice that you're testifying
4 today. If you will, please turn with me to page two of
5 this document. There's a section in bold and centered
6 a little more than halfway down that says, "Topics Upon
7 Which Examination is Requested." Do you see that, sir.

8 ?

9 A. Yes, I do.

10 Q. You see there are a number of topics, I
11 believe one through 45 between page two and nine listed
12 there. Are you prepared to testify with respect to
13 each of these topics today?

14 MR. ORME: Objection; we haven't -- that's
15 not for him to respond to. I'm happy to tell you which
16 topics he's willing to discuss today.

17 MR. DOWDY: Okay. What topics is he prepared
18 to discuss today?

19 MR. ORME: One.

20 MR. DOWDY: Okay.

21 MR. ORME: Two, six, seven, eight, nine, ten,
22 some of 11.

23 MR. DOWDY: Which parts of 11?

24 MR. ORME: The -- well, you can ask questions
25 and you can find out the extent of his knowledge on

1 that on representing the corporation. 16, 17, 18, 19,
2 20, 21, 22, 23, 24, 25, 26, 27, 28, 29; that's it.

3 MR. DOWDY: Will someone else be appearing
4 today to testify as to the other topics?

5 MR. ORME: Well, considering the extent of
6 topics that he will be testifying to we will not have
7 another deponent available today. We expect this is
8 going to take most of the day.

9 MR. DOWDY: Okay. Hold on one moment.

10 (Pause in proceeding.)

11 For purposes of the deposition today, Rapid Rack
12 is refusing to produce a witness for topics three
13 through five, 11 through 15?

14 MR. ORME: Hold on just a moment, Joe. That
15 is not what we're saying. You have listed 45 topics
16 here in your Notice of Deposition.

17 MR. DOWDY: Yes, sir.

18 MR. ORME: To expect to get through 45 topics
19 of deposition in one day is really unreasonable and to
20 expect one person to be able to testify to all 45 is
21 also unreasonable. You have not given any indication
22 of how long these are going to take, so we are not
23 refusing to produce somebody. We have looked at this
24 and said the extent of information that you are seeking
25 goes well beyond a single day of deposition testimony.

1 MR. DOWDY: I'm just a little unclear as to
2 why then you didn't move for a protective order if you
3 thought we needed -- in other words, I listed and asked
4 somebody to appear today.

5 MR. ORME: And we have produced somebody to
6 appear; that's correct.

7 MR. DOWDY: But not as to all topics. You
8 could have produced more than one person today. I've
9 done those kind of depositions before where there's
10 several people sitting there and we can ask -- and I
11 have not been given any notice today of which topic to
12 prepare to examine somebody on or to cover certain
13 topics as opposed to others.

14 MR. ORME: We have produced somebody who is
15 going to be testifying to nearly half of your topics
16 which are numerous in breadth and scope, so we have
17 given -- you know, we're producing someone that was
18 responsive to your Notice of Deposition.

19 MR. DOWDY: With the exception of the half of
20 the topics that you haven't produced somebody for? I
21 mean, I guess my question is no one will be appearing
22 today with respect to those other topics that you
23 haven't listed already; is that correct?

24 MR. ORME: That is correct, because you haven't
25 indicated how long this deposition will take and given

1 the breadth and scope of of what our witness here today
2 will testify to we believe that will take most of the
3 day.

4 MR. DOWDY: And just in case I'm missing
5 something, did I get some kind of letter or something
6 indicating which topics somebody would not be produced
7 today?

8 MR. ORME: Considering I'm not sitting at my
9 computer, I can't answer that right at the moment

10 MR. DOWDY: So maybe or maybe not. I'll
11 represent just for purposes of the record, I don't
12 recall receiving anything that told me I would -- that
13 topics would be limited. But perhaps we can handle it
14 this way, if you'll -- just one moment.

15 (Pause in proceeding.)

16 Q. (BY MR. DOWDY): Mr. Taylor, sorry to get
17 away from you for a moment there. I'm going to ask you
18 some questions about the Notice. I intend these to be
19 pretty straightforward yes-or-no questions.

20 Are you prepared to testify today with respect to
21 topic three listed on page two of the topics upon which
22 examination was requested?

23 A. Yes, I'll try.

24 Q. And same question with respect to topic four?

25 MR. ORME: Objection to the extent that we

1 haven't designated him for that. You're more than
2 welcome to ask questions. We are not holding him out
3 as the person who will be testifying on these topics;
4 however, you're free to explore his knowledge. I would
5 state that he -- on such topics he's testifying in a
6 personal capacity not as a 30(b)(6).

7 MR. DOWDY: If we finish the topics that
8 you've identified in four hours is someone else going
9 to be appearing today to cover the remaining topics?

10 MR. ORME: Well, at this point I wouldn't say
11 yes or no. I would expect no because I have a sneaky
12 suspicion with nearly half of the topics for which
13 Randy Taylor's been designated it will be longer than
14 four hours. Are you representing you will only take a
15 four-hour deposition?

16 MR. DOWDY: I'm not saying that at all. I'm
17 requesting that inquiry be made and that we have
18 sufficient people there to testify on all the topics
19 upon which examination is requested for today given
20 that I haven't been given any notice that that was not
21 going to be the case, and I'm asking him as the person
22 who's been designated, who's the Rule 30(b)(6) designee
23 of Rapid Rack Industries today, whether he is prepared
24 to testify as to topic four.

25 I've got the speaking objection on the record, but

1 I want to know whether he's prepared to testify for
2 topic four for the company.

3 MR. ORME: You're going in two directions
4 here, Joe. One was: Are we going to have another
5 30(b)(6). My first question was: Will you be finished
6 in four hours with this witness?

7 MR. DOWDY: I wouldn't -- I'm not committing
8 one way or the other.

9 MR. ORME: So you're asking us to bring other
10 deponents in and sit here all day and you have no idea
11 how long this will take; is that correct?

12 MR. DOWDY: That is not correct. What I'm
13 saying is I may ask a question about any of the topics
14 because the topics are interrelated. And I prepared
15 for this deposition in good faith believing that a
16 30(b)(6) designee was going to be appearing, one or
17 more 30(b)(6) designees to testify as to all the topics
18 and I don't have that right now. I came in sort of at
19 the last minute. Not even when I called and was told
20 you needed 15 more minutes to get the conference room
21 ready, not even then was I told I only had one person
22 who was only going to testify as to some topics.

23 It's my position he's the Rule 30(b)(6) designee.
24 He can offer testimony on the topics today or there's
25 been a refusal to produce with respect to the remaining

1 topics and I can ask about the topics he hasn't been
2 designated on. If he does not have any evidence to
3 offer then the company doesn't have any evidence to
4 offer. That's my position on it.

5 MR. ORME: Okay. Well, let's first off
6 clarify the record. The reason I stated 15 minutes is
7 your court reporter what not here this morning, and I
8 would make that very clear. It was Rhino Linings USA
9 was stuck in traffic getting here, through no fault of
10 her own, and that's why I asked for a 15-minute delay
11 to accommodate Rhino Linings.

12 Secondly, we are not refusing to produce a
13 deponent for other topics; there you're mistaken. We
14 have never stated we are refusing to produce that. As
15 you indicated, there is more -- you were expecting more
16 than one 30(b)(6) then you're also in the same breath
17 saying we want one deponent for all of them. That's
18 inconsistent. Please let me know what exactly is your
19 position.

20 MR. DOWDY: Okay. I didn't say the last
21 part, Patrick. I want whoever is going to appear for
22 the company on 1, 2, 10, 20 to appear for the Rule
23 30(b)(6) deposition to appear for the Rule 30(b)(6)
24 deposition that I'm prepared to take today. I don't
25 care how many people show up, and you know, if at the

1 end of the day because -- if I'm finish taking the
2 deposition today and there's no testimony offered on
3 those topics that I've asked questions about, then it's
4 my position that the company does not have any evidence
5 to produce on this topic. They haven't produced a
6 designee and they refused to appear as to those topics.

7 MR. ORME: Well, that's not the case
8 whatsoever. We're not refusing. We have offered up a
9 deponent in good faith believing that he is going to
10 testify nearly half of the 45 different topics you have
11 requested, and in order to get through 45 topics it's
12 going to take the entire day. If, as I asked you
13 earlier, it's only going to take you four hours, then
14 we can consider getting someone else here to testify on
15 other topics. So if you give me a time limit as to
16 what -- how long you will be deposing Mr. Taylor, I'll
17 be happy to inquire into having another deponent. And
18 we are not stating there was no evidence, and I think
19 that is just a complete misstatement and unreasonable
20 on you part to even put forth such an accusation, okay.

21 MR. DOWDY: Patrick, there's nobody being
22 produced to testify as to the discovery responses that
23 have been given and the documents produced. Is it your
24 position that you're not -- I mean, no, I'm not going
25 to -- there's so many ways to go with this.

1 First of all, I'm not going to limit my
2 examination. I'm going to ask the question and what --
3 I'm not required by law to ask them in any particular
4 order. Rapid Rack nor its counsel get to choose what
5 order I ask the questions in. It's my deposition.

6 MR. ORME: We've never stated that was the
7 case, Joe, so please don't misstate what I've put
8 forth.

9 MR. DOWDY: What if I want to ask questions
10 about number four first? Who's going to respond to
11 those right now? Let's say that's what I want to talk
12 about first.

13 MR. ORME: I want to ask you. We could
14 designate more than one person for different 30(b)(6)
15 topics. I would hope you understand that.

16 MR. DOWDY: I do --

17 MR. ORME: Hold on a moment, please. If you
18 want to ask a question with regard to number four, you
19 want us to have one deponent, then if you want to go to
20 topic number one, of which we've designated Randy
21 Taylor, we're going to stop, swear in another witness
22 and go back and forth with multiple witness all day?
23 Is that what you're proposing?

24 MR. DOWDY: Got it all. They all be sworn in
25 and they all ask -- whenever I've done it in the past,

1 you swear in all three witnesses at once, they sit
2 wherever they sit around the table and then when you
3 ask a question the appropriate designee answers it.

4 MR. DOWDY: I ask that we go off the record.
5 I'm going to put you on mute and we'll be right back.

6 (Off the record.)

7 MR. ORME: Okay. We're back on the record.

8 THE COURT REPORTER: Counsel, I just want to
9 clarify something. I had the deposition start time for
10 this deposition as 8:30. I was in the lobby at 8:20
11 and asked for five minutes to set up. I was in
12 traffic, but I did not get here after 8:30.

13 MR. DOWDY: I understood.

14 MR. ORME: You know, Joe, I have never heard
15 of taking multiple deponents at one time. Can you
16 please provide me case law that supports a proposition
17 if that's really how you would like to proceed. Like I
18 said, I've never heard of multiple deponents. One,
19 having multiple deponents for the court reporter to
20 take care of multiple witnesses and who's testifying.
21 I think perhaps we should take this up with the
22 interlocutory attorney, but that's your decision. You
23 need to agree however that we are not refusing to
24 produce evidence to topics that Mr. Taylor's not
25 designated on.

1 MR. DOWDY: I do not agree with that, but
2 here's what I propose, Patrick: You know my position.
3 Let's just proceed with the deposition and if the
4 deponent does not know the answer to my question then
5 he'll say he does not know. I understand it's your
6 position that you haven't designated him and you don't
7 believe that will be binding on the company, as long as
8 you understand it's my position that it is. We might
9 as well see what we can accomplish today.

10 MR. ORME: If it's your position that it is,
11 please provide me where case law supports multiple
12 deponents at one time.

13 MR. DOWDY: I'm not arguing a motion today
14 though, Patrick.

15 MR. ORME: No, and I realize that, Joe, and
16 I'm not saying you're arguing a motion; however, your
17 statement for the record is inaccurate stating that we
18 have to have multiple deponents at one time, and is
19 that still your position?

20 MR. DOWDY: It's my position that one or more
21 persons had to be present today to testify as to each
22 of the topics I've designated unless you move for
23 protective order ahead of time or contacted me and
24 asked to conduct it with respect to limited topics. I
25 am reading Rule 30(b)6, it says, "The organization so

1 named shall designate one or more officers or
2 directors, managing agent or person who consent to
3 testify on its behalf and may set forth for each person
4 designated the matters on which the person will
5 testify."

6 In other words, I think they all had to show up
7 today and you had to tell me who was testifying as to
8 what. That's fine. But to just bring one person and
9 say today, "We only want to have the deposition on
10 certain topics you've noticed and we don't want you to
11 proceed with the Notice on remaining topics," I object,
12 to that. I don't believe that's what the law says, but
13 I think we should move on.

14 MR. ORME: So I just want to make sure I'm
15 clear on what you're stating. You're stating we should
16 have multiple witnesses here at one time so you can ask
17 different witnesses questions in any order you want; is
18 that correct?

19 MR. DOWDY: Or do the witnesses sequentially.
20 I can see how we can work it out the way you say. If
21 you wanted to show up with several witnesses today and
22 say look we've got the following people on the
23 following topics, then I could choose in what order I
24 want to depose those witnesses. What's been done
25 instead is I've been told we only want to testify today

1 on certain topics and that's who we're bringing and the
2 company isn't going to produce a witness with respect
3 to the other ones, at least not today.

4 MR. ORME: Now, Joe, that's inconsistent from
5 what you've stated earlier where you said you've done
6 this several times where you have multiple witnesses
7 being deposed.

8 MR. DOWDY: I said you can do it either way,
9 Patrick. You've done it neither way. It does not
10 matter. It does not matter which way we do it whether
11 we do it one witness at a time all in one day or
12 several witnesses all at once, both of which are
13 perfectly lawful, but it doesn't matter which way you
14 do it. You've done neither. What I've got today is
15 one witness on certain topics and I've been told
16 there's certain things we're going to testify to today
17 and certain things we're not going to testify to today
18 and, you know, being that the case, I don't disagree
19 that it's an issue we can take up with the Board. But
20 what I'd like to do now is proceed with my deposition
21 and we understand what our relative positions are on
22 what the answers count for.

23 MR. ORME: First off, we have met our
24 obligation. We produced a deponent that is willing to
25 discuss certain topics. Rule 30(b)(6) does not require

1 single deponent knowledgeable on all topics. You have
2 failed to indicate how long this deposition will occur
3 to the extent that this witness has not been designated
4 for other Rule 30(b)(6) topics. In no way is Rapid
5 Rack Industries indicating they will not produce
6 evidence or produce a deponent to those topics. We'll
7 make that perfectly clear. And to the extent the
8 witness cannot answer to a topic he's not been
9 designated on in no way is Rapid Rack admitting they
10 don't have evidence. On those grounds we will proceed
11 with the deposition.

12 MR. DOWDY: I don't consent with that, but I
13 agree to proceed with the deposition. We'll let the
14 Board decide what it means.

15 MR. ORME: That's fine.

16 Q. (BY MR. DOWDY): Mr. Taylor, are you prepared
17 to testify as to topic four listed on the deposition
18 notice today?

19 A. No.

20 Q. Are you prepared to testify as to topic five
21 listed on the Notice of Deposition today?

22 A. No.

23 Q. Are you prepared to testify as to topic
24 number 11 in the Deposition Notice --

25 A. No.

1 Q. -- for the company?

2 A. No.

3 Q. Are you prepared to testify as to topic 12
4 listed in the deposition notice for the Company?

5 A. No.

6 Q. Are you prepared to testify for the company
7 as to topic 13 of the deposition notice?

8 A. No.

9 Q. Are you prepared testify as to topic 14
10 listed on the deposition notice for the Company?

11 A. No.

12 Q. Are you prepared to testify for the Company
13 as to topic 15 listed in the deposition notice?

14 A. No.

15 Q. Are you prepared to testify for the Company
16 as to topic 30 for the Company?

17 A. No.

18 Q. What about with respect to topic 31, are you
19 prepared to testify for the Company with respect to
20 that topic?

21 A. No.

22 Q. With respect to topic 32, are you prepared to
23 testify for the Company as to that topic?

24 A. No.

25 Q. I'm going to ask the same question and please

1 feel free to take time and read them. I'm not trying
2 to rush your answer. I'm going to ask you the same
3 question with respect to topics 33 through 45. The
4 question is: Are you prepared to testify for the
5 Company with respect to those topics?

6 A. Of those you just named only number 39.

7 Q. I'm sorry. Did you hear my question? So you
8 are prepared to testify as to topic 39 on behalf of the
9 Company?

10 A. Yes.

11 Q. But as to the remaining ones that we listed
12 of 33 through 45, you are not prepared to testify for
13 the Company?

14 A. Correct.

15 Q. Thank you, Mr. Taylor. How did you prepared
16 for this deposition today? And if may, when I'm asking
17 the next questions, I'm not asking what your counsel
18 may have told you or anything like that. Please don't
19 tell me anything your lawyers told you. That's not
20 going to be what I'm asking. With that caveat, how did
21 you prepare for this deposition today?

22 A. I -- actually very little. I mean, I looked
23 for a few part numbers last night, but that was all.
24 The first I heard of this was yesterday.

25 Q. Did you have any meetings or conversations

1 other than with your attorney to prepare for this
2 deposition?

3 A. No.

4 Q. Did you review any documents?

5 A. No.

6 Q. If you would estimate, how much time did you
7 spend preparing?

8 A. Maybe an hour.

9 Q. Thank you. Because this is a Rule 30(b)(6)
10 deposition, I'm going to use the word you. If we can
11 just be clear, when I use the word you, I'm referring
12 to Rapid Rack and not you individually unless I specify
13 otherwise. Do you understand that?

14 A. Yes.

15 Q. What's nature of the business conducted by
16 Rapid Rack?

17 A. Manufacturer of boltless, for consumer and
18 industrial shelving.

19 Q. You manufacture boltless consumer and
20 industrial shelving product?

21 A. That's correct.

22 Q. Where are those products manufactured?

23 A. City of Industry, California.

24 Q. They're all manufactured on site there?

25 A. You didn't let me finish, sir.

1 Q. I'm sorry.

2 A. City of Industry, California, and also in
3 China.

4 Q. Is there sort of a rough breakdown as to
5 which products are manufactured in the City of Industry
6 and which products are manufactured in China?

7 MR. ORME Objection; vague. Which products
8 are you specifying on, Joe?

9 Q. (BY MR. DOWDY): You understand my question,
10 sir?

11 A. Yes.

12 Q. Please go ahead and answer it.

13 A. City of Industry is industrial and consumer.
14 China is consumer.

15 Q. Which industrial and consumer products are
16 manufactured in the City of Industry?

17 A. Can you clarify that, please?

18 Q. Is there like a category? Are there certain
19 divisions within the company, most products are
20 manufactured in City of Industry and other products are
21 manufactured in China?

22 MR. ORME: Objection; assumes facts not in
23 evidence with respect to the Company structure.

24 Q. (BY MR. DOWDY): Do you understand my
25 question, sir?

1 A. No, sir.

2 Q. How do you determine which products will be
3 manufactured in the City of Industry and which products
4 will be manufactured in China?

5 A. That's done -- actually it would be the
6 decision of the president of the company.

7 Q. Do you know how he determines which products
8 are manufactured where?

9 A. No, I do not.

10 Q. Are there divisions within Rapid Rack?

11 A. Yes.

12 Q. Can you describe those divisions for me?

13 A. What type of description would you like?

14 Q. Well, just to start off with, can you
15 identify what the divisions are?

16 A. Yes. Industrial, then there's the consumer
17 Gorilla Rack and consumer Rhino Rack.

18 Q. Can you tell me what those divisions do
19 starting with the the industrial, what does that
20 division do?

21 A. Produce industrial shelving for back room
22 storage for industrial customers, distributors and
23 dealers.

24 Q. What about consumer Gorilla Rack?

25 A. Produces boltless shelving for consumer

1 products for resale.

2 Q. What about consumer Rhino Rack?

3 A. Products, consumer products for resale for
4 consumer sales.

5 Q. Why are there separate divisions for Gorilla
6 Rack and Rhino Rack?

7 A. Different price points.

8 Q. What are the different price points?

9 A. That would be --

10 MR. ORME: Objection; vague.

11 THE WITNESS: Yeah, that's --

12 Q. (BY MR. DOWDY): Well, how is the distinction
13 drawn: You noted a distinction based on price point.
14 How is that distinction drawn?

15 A. Quality of product.

16 Q. What do you mean by quality of product?

17 A. Gauge difference.

18 Q. What do you mean by gauge difference?

19 A. I don't understand your question at that
20 point.

21 Q. It's quality of product. Does one product
22 have a higher quality than the other?

23 A. It can have -- yes, as far as capacity.

24 Q. Which product is of higher quality?

25 A. Generally Gorilla.

1 Q. How does Rapid Rack advertise its products?

2 MR. ORME: Objection; vague. Which products
3 are you referring to?

4 MR. DOWDY: Generally, how does the Company
5 advertise? What methods of advertising does Rapid Rack
6 use?

7 MR. ORME: Same objection.

8 Q. (BY MR. DOWDY): Do you understand my
9 question?

10 A. Not completely.

11 Q. With respect to the industrial division of
12 Rap- -- well, strike that question.

13 Is there an advertising division of Rapid Rack --
14 or department?

15 A. Advertising, no.

16 Q. Is this a marketing -- are there people in
17 the Company employed to handle marketing or advertising
18 of the product?

19 A. Marketing, yes.

20 Q. Who are those people?

21 A. Dana Coelho and that's it.

22 Q. How does Rapid Rack advertise its products in
23 the Rhino Rack division?

24 A. Websites.

25 Q. What website is that?

1 A. I don't know.

2 Q. Any other ways you're aware of that it
3 advertises -- that the Rhino Rack division advertises
4 its products?

5 A. Not to my knowledge.

6 Q. Okay with respect to the Gorilla Racks, do
7 you know how Rapid Rack advertises the products within
8 the Gorilla Rack division?

9 A. Website.

10 Q. Are you aware of which website?

11 A. Gorilla Rack, it's the Gorilla Rack website
12 and a Rapid Rack website.

13 Q. Is there a Rhino Rack website?

14 A. Not to my knowledge.

15 Q. What about products in the industrial
16 division; how does Rapid Rack advertise those products?

17 A. Rapid Rack website.

18 Q. Any other methods of advertising with respect
19 to those products that you're aware?

20 A. Not that I'm aware of.

21 Q. And does Rapid Rack sell products?

22 MR. ORME: Vague.

23 THE WITNESS: Yes.

24 MR. ORME: Objection; which products are you
25 indicating?

1 MR. DOWDY: Any products.

2 MR. ORME: Same objection.

3 Q. (BY MR. DOWDY): You understand my question,
4 sir?

5 A. Could you reword it.

6 Q. My question is this? Is the Company involved
7 in sales of products, any products at all?

8 A. Yes.

9 Q. Does Rapid Rack sell products directly or
10 does it use distributors?

11 A. Both.

12 Q. Under what circumstances -- well, strike the
13 question.

14 When does Rapid Rack use a distributor and when
15 does Rapid Rack sell products directly?

16 MR. ORME: Objection; vague.

17 MR. DOWDY: Please answer if you can, sir.

18 THE WITNESS: That would be a management
19 decision.

20 Q. (BY MR. DOWDY): You know how management
21 makes that decision?

22 A. No, I do not.

23 Q. Does Rapid Rack have any parent companies?

24 A. Yes.

25 Q. What are those companies?

1 A. Patriarch.

2 Q. Is Patriarch -- is Rapid Rack a wholly-owned
3 subsidiary of Patriarch?

4 A. I would have no knowledge of that.

5 Q. You don't know the answer to that one?

6 A. No, I do not.

7 Q. What's the full name of Patriarch?

8 A. I don't know.

9 Q. Does Rapid Rack have any subsidiaries?

10 A. Not to my knowledge.

11 Q. At Rapid Rack who's responsible for
12 overseeing -- well, strike the question.

13 Sir, is it true that Rapid Rack is owner of
14 registration number 1,698,407 for the Mark Rhino Rack?

15 A. I wouldn't actually know that.

16 Q. You don't know the answer to that?

17 A. No, sir.

18 Q. Do you know when Rapid Rack first filed for
19 trademark right with respect to the Rhino Rack Mark?

20 MR. ORME: Objection; question for which he's
21 not designated.

22 MR. DOWDY: Please answer, sir.

23 THE WITNESS: No.

24 Q. (BY MR. DOWDY): From now on I'm going to
25 refer to the Rhino Rack Mark the registrant contends

1 that it has, I'm going to use the shorthand term
2 Registrant's Mark or Rhino Rack Mark; do you understand
3 that, sir?

4 A. Yes.

5 Q. Do you know when Rhino Rack first filed a
6 Specimen of Use with United States Patent and Trademark
7 Office for the Rhino Rack Mark?

8 MR. ORME: Objection; topic for which he's
9 not designated.

10 MR. DOWDY: Please answer.

11 THE WITNESS: No.

12 Q. (BY MR. DOWDY): Do you know what the
13 Specimen of Use was that was first filed with United
14 States Patent and Trademark Office?

15 A. Objection; same objection.

16 MR. DOWDY: I'll give you a running objection
17 to these, Patrick.

18 MR. ORME: Okay.

19 THE WITNESS: No.

20 MR. ORME: However, I think I'll insert it
21 just to have it clear on the record.

22 MR. DOWDY: Understood.

23 Q. (BY MR. DOWDY): Sir, do you know whether the
24 Rhino Rack Mark is registered for the following goods:
25 Work tables with and without wheels, work benches,

1 industrial shelving, storage racks and component parts
2 therefore?

3 MR. ORME: Objection; compound. Objection;
4 asking for topics for which he's not designated.

5 MR. DOWDY: Please answer.

6 THE WITNESS: No.

7 Q. (BY MR. DOWDY): Do you know what a work
8 table is, sir, as it's defined in the registration?

9 MR. ORME: Objection; topic for which he's
10 not designated. He can only answer in an individual
11 capacity.

12 MR. DOWDY: That's for the Board, but please
13 answer if you can, sir -- please answer the question.

14 Q. (BY MR. DOWDY): Do you know what a work
15 table is as described in the registration?

16 MR. ORME: Same objection.

17 THE WITNESS: No.

18 Q. (BY MR. DOWDY): Do you know what a work
19 bench is as described in the registration?

20 MR. ORME: Same objection.

21 THE WITNESS: No.

22 Q. (BY MR. DOWDY): Do you know what industrial
23 shelving is as defined in the registration?

24 MR. ORME: Same objection.

25 THE WITNESS: No.

1 MR. DOWDY: Do you know what a storage rack
2 is as defined in the registration?

3 MR. ORME: Same objection.

4 THE WITNESS: No.

5 Q. (BY MR. DOWDY): Do you know what component
6 parts for those items would be as described in the
7 registration?

8 MR. ORME: Same objection.

9 THE WITNESS: No.

10 Q. (BY MR. DOWDY): Do you know whether the
11 registration includes cabinetry?

12 MR. ORME: Same objection.

13 THE WITNESS: No.

14 Q. (BY MR. DOWDY): Do you know whether the
15 registration includes consumer shelving?

16 MR. ORME: Same objection.

17 THE WITNESS: No.

18 Q. (BY MR. ORME): Do you know whether the
19 registration includes worktops?

20 MR. ORME: Same objection.

21 THE WITNESS: No.

22 Q. (BY MR. DOWDY): Do you know if there's a
23 difference between consumer shelving and industrial
24 shelving?

25 A. Yes.

1 Q. What is that difference?

2 A. Again it's quality and gauges.

3 Q. What gauges qualify industrial shelving?

4 A. 14, 16, 20.

5 Q. What about consumer shelving?

6 A. It varies. 18, occasionally 16.

7 Q. Any others?

8 A. Not that I'm aware of.

9 Q. And the gauge you're referring to, is that
10 the gauge of the -- is it steel that's used?

11 A. Yes.

12 Q. Other than the gauge how does the quality
13 differ as between industrial shelving and consumer
14 shelving?

15 A. It doesn't.

16 Q. You say 16 is sometimes used in both consumer
17 and industrial shelving?

18 A. Correct.

19 MR. DOWDY: Madam Court Reporter, if I may,
20 there's an envelope marked Declaration of Use. Can I
21 have that opened and marked, please.

22 (Exhibit No. 2 marked.)

23 MR. DOWDY: Thank you kindly.

24 Q. (BY MR. DOWDY): If you will turn to what's
25 been marked Exhibit 2, sir, you see it says

1 "Declaration" at the top?

2 A. Yes.

3 Q. You see it's signed by someone named Ray
4 Lawhon?

5 A. Yes.

6 Q. You know Mr. Lawhon?

7 A. Yes.

8 Q. Who is Mr. Lawhon?

9 MR. ORME: I'm sorry. I didn't hear you.

10 Q. (BY MR. DOWDY): Who is Mr. Lawhon?

11 A. Former president and chairman of the Board of
12 Rapid Rack.

13 MR. DOWDY: Did you speak with Mr. Lawhon as
14 part of him making this Declaration that we're looking
15 at?

16 A. No.

17 Q. Do you know what information he had available
18 to him or that he was reviewing when he made this
19 Declaration?

20 MR. ORME: Objection; calls for speculation.

21 Q. (BY MR. DOWDY): Do you know the answer to
22 the question, sir, you as I've defined it?

23 A. No.

24 MR. ORME: I'm going to object. Can you --
25 how did you define you? I just want to make sure I

1 know.

2 MR. DOWDY: As the Company.

3 MR. ORME: Can you repeat the question.

4 MR. DOWDY: The question's been asked and
5 answered. You can read it back, Madam Court Reporter,
6 if you would.

7 MR. ORME: Read that back, please.

8 (Record read.)

9 THE WITNESS: Do you understand it?

10 Q. (BY MR. DOWDY): We'll move on. I'm asking
11 do you know, and you understand we've talked about you
12 being the Rule 30(b)(6) designee. I'm asking as we sit
13 here today, do you know what information Mr. Lawhon had
14 in front of him when he made this declaration?

15 MR. ORME: Objection; you can go ahead and
16 answer it.

17 A. No.

18 Q. (BY MR. DOWDY): Do you know if the
19 information that he provided in this declaration was
20 accurate or not?

21 MR. ORME: Objection.

22 THE WITNESS: No.

23 Q. (BY MR. DOWDY): Did you use the Rhino Rack
24 Mark in calendar year 1998

25 A. I'm not sure that that's the year I started.

1 Oh, excuse me, '98?

2 Q. Yes '98?

3 A. As far as I know, yes.

4 Q. What's the basis? You said as far as you
5 know. What's the basis for that your answer yes?

6 A. Just some of what I actually found last night
7 on the internet or excuse me on our computer system.

8 Q. What did you find on your computer system
9 that led you to believe that?

10 A. RR-4805 sales history.

11 Q. So you believe you used it on RR-4805 in
12 1998?

13 A. I believe so.

14 Q. How do you know that it was used on RR-4805
15 in 1998?

16 A. Just from what I found on our computer
17 system.

18 Q. What is that, sir? What did you find on your
19 computer system?

20 A. Sales information.

21 Q. Does the sales information show the
22 trademark?

23 MR. ORME: Objection. Which trademarks?

24 MR. DOWDY: The Rhino Rack Mark.

25 THE WITNESS: No.

1 Q. (BY MR. DOWDY): Did you use the Mark in
2 calendar year 1990?

3 MR. ORME: Objection; vague. You're
4 referring to the Rhino Rack Mark?

5 MR. DOWDY: If I use the term Mark and I
6 don't specify otherwise, I'm referring to the Rhino
7 Rack Mark. Did you use the Rhino Rack Mark in calendar
8 year 1999?

9 A. Yes.

10 Q. What's the basis for your statement that you
11 did?

12 A. Information found on the computer.

13 Q. What information did you find on the
14 computer?

15 A. Sales of the RR-4805.

16 Q. Does that sales information show the Rhino
17 Rack trademark?

18 A. No.

19 Q. Did you use the Rhino Rack Mark in calendar
20 year 2000?

21 A. Yes.

22 Q. What's the basis of that answer?

23 A. Sales found on the computer system.

24 Q. Sales of which product?

25 A. RR-4805.

1 Q. Are there any other products that you're
2 basing that answer on?

3 A. No.

4 Q. Does that sales information for 2000 show the
5 Rhino Rack Mark?

6 A. No.

7 Q. Did you use the Rhino Rack Mark in calendar
8 year 2001?

9 A. Yes.

10 Q. What's the basis of that answer?

11 A. Sales for the RR-4805 found on our computer
12 system.

13 Q. Any other products upon which that answer is
14 based?

15 A. No.

16 Q. Does that sales information that you reviewed
17 show the Rhino Rack Mark?

18 A. No.

19 Q. Did you use the Rhino Rack Mark in calendar
20 year 2002?

21 A. Yes.

22 Q. What's the basis of that yes answer?

23 A. Sales on the computer system of the RR-4805.

24 Q. Is it based on sales of any other products?

25 A. No.

1 Q. Did that sales information show use of the
2 Rhino Rack Mark?

3 A. No.

4 Q. Did you use the Rhino Rack Mark in calendar
5 year 2003?

6 A. Yes.

7 Q. What's the basis of that yes answer?

8 A. Sales of the RR-4805 on the computer system.

9 Q. So it is your contention that there were
10 sales of RR-4805 in 2003?

11 A. Yes.

12 Q. Is that answer based on sales of any other
13 products?

14 A. No.

15 Q. Does that sales information show the use of
16 the Rhino Rack Mark?

17 A. No.

18 Q. Did you use the Rhino Rack Mark in calendar
19 year 2004?

20 A. I have no knowledge of that.

21 Q. Did you use the Rhino Rack Mark in calendar
22 year 2005?

23 A. I have no personal knowledge of that.

24 Q. Did you use the Rhino Rack Mark in calendar
25 year 2006?

1 A. No personal knowledge of that.

2 Q. Did you use the Rhino Rack Mark in calendar
3 year 2007?

4 A. Yes.

5 Q. What is the basis of that yes answer?

6 A. Personal knowledge of packaging or package
7 units on the floor.

8 Q. Which package units were those?

9 A. GRL-100 and GRL-3012.

10 Q. Let me ask you -- well, hold on. Just give
11 me one second. I'm going to go on mute. This will
12 only take a second. Sorry about that, Mr. Taylor.

13 (Pause in proceeding.)

14 Q. (BY MR. DOWDY): How do you know that the
15 Rhino Rack Mark was used on RR-4805 between 1998 and
16 2003?

17 MR. ORME: Objection; asked and answered.

18 MR. DOWDY: You can answer the question.

19 THE WITNESS: Just based on the part number
20 and description on the sales orders.

21 Q. (BY MR. DOWDY): It's not based on anything
22 else?

23 A. No.

24 Q. What was the part number? What are you
25 referring to by the term part number?

1 A. RR-4805.

2 Q. And description of sales, what do you mean by
3 that?

4 A. Description on the sales order itself states
5 Rhino.

6 MR. ORME: We're gonna take a break for a
7 moment. We've been going for, it looks like a little
8 over an hour, so the deponent needs to take a break.

9 MR. DOWDY: I'll stay on mute. You can do
10 the same. Let's plan to come back in ten minutes.

11 MR. ORME: Ten minutes or so exactly.

12 MR. DOWDY: Okay, thanks. Off the record.

13 (Off the record.)

14 MR. DOWDY: Madam Court Reporter, if you
15 will, there's one of the big binders, it's marked Rapid
16 Rack Documents Production. I'd like that marked as
17 Exhibit 3, and for the record there are some documents
18 in there that Rapid Rack has designated as confidential
19 or as highly confidential and this needs to be
20 protected with utmost protection, not disclosed to
21 anyone public, private or otherwise. In fact, it needs
22 to be sealed.

23 MR. ORME: To the extent you're asking
24 questions from these trade secret commercially
25 sensitive documents. I would ask that that portion of

1 the transcript be designated AEO.

2 MR. DOWDY: Okay. Clarify what do you mean
3 by that?

4 MR. ORME: Attorneys eyes only.

5 MR. DOWDY: I understand. This is exhibit
6 number?

7 MR. ORME: Three.

8 (Exhibit No. 3 marked.)

9 (THE FOLLOWING TESTIMONY IS SEALED FOR
10 ATTORNEYS' EYES ONLY.)

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Deposition pages 48 to 66 are submitted under seal.

1 MR. DOWDY: Wait a minute. You said I
2 haven't produced it.

3 MR. ORME: If you're going to produce a
4 document that you are going to question a witness on,
5 you don't produce it the first time in a deposition.
6 Let's go on. I just want to put my objection on the
7 record.

8 MR. DOWDY: Do we agree that you have not
9 submitted Request for Production of Documents to my
10 client in this action?

11 MR. ORME: That's correct.

12 Q. (BY MR. DOWDY): Mr. Taylor, I'll ask you to
13 look at what's been marked as Exhibit 4, please?

14 A. Okay.

15 Q. Do you recognize this?

16 A. No, I have never seen this before.

17 Q. Do you know if this is the package insert
18 instructions for unit assembly for produce numbers
19 GRL-100 and GRL-110?

20 MR. ORME: Objection; lack of foundation.

21 MR. DOWDY: Do you know is the question, sir.

22 THE WITNESS: I personally do not know.

23 Q. (BY MR. DOWDY): Do you know what the package
24 insert instructions for unit assembly look like for
25 GRL-100 or GRL-110

1 A. No, I do not.

2 Q. Do you know whether this document appears on
3 the Gorilla Rack Website?

4 MR. ORME: Objection; beyond the scope of his
5 designated topics. You can go ahead and answer.

6 THE WITNESS: No, I do not. I was thinking.

7 MR. DOWDY: I think it's topic 27 to which he
8 said he was, in fact -- he was designated as for topic
9 27 if you want to withdraw that, then I'll allow it.

10 MR. ORME: No, topic 27 is with Gorilla Rack
11 not Gorilla Rack Light. This is actually outside the
12 scope of anything you've designated.

13 Q. (BY MR. DOWDY): Okay. Well, would you agree
14 with me, sir, that this is not -- well, if you look at
15 the bottom, in the very bottom in the center it says
16 www.gorillarak.com?

17 A. I see that.

18 Q. Does it appear to you that this document came
19 from the Gorilla Rack website by Rapid Rack?

20 MR. ORME: Objection; assumes facts not in
21 evidence.

22 THE WITNESS: Not sure.

23 Q. (BY MR. DOWDY): Okay. You agree with me
24 that the Rhino Rack Mark does not appear on this
25 Exhibit 4?

1 MR. ORME: Take the time to review the
2 document.

3 MR. DOWDY: Yeah, I would say so. Take all
4 the time you need.

5 THE WITNESS: Because I've never seen this.
6 I don't see any reference to Rhino Rack on here.

7 Q. (BY MR. DOWDY): Are you familiar with the
8 Gorilla Rack website?

9 A. Not really.

10 Q. Have you ever reviewed the Gorilla Rack
11 website?

12 A. Not in over a year.

13 Q. Do you know whether the Rhino Rack Mark
14 appears anywhere on the Gorilla Rack website?

15 A. I would have no personal knowledge of that.

16 Q. Are you familiar with the Rapid Rack website?

17 MR. ORME: Objection; you're going outside
18 the scope of topics he's designated for.

19 Q. (BY MR. DOWDY): Are you familiar with the
20 Rapid Rack website, Mr. Taylor?

21 A. No, not really.

22 Q. Have you reviewed the Rapid Rack website?

23 A. Not again in a long period of time.

24 Q. Do you know whether the Rhino Rack Mark is
25 used anywhere on the Rapid Rack website?

1 A. Objection; beyond the scope of his topics.

2 A. No, I would have no personal knowledge.

3 Q. You're not designated as to topic 17,
4 registrant's use of Registrant's Mark and Advertising
5 including any such use, and some other things and
6 internet website, January 1, 1999 to present"?

7 Mr. Taylor, have you been designated as to topic
8 17 in Exhibit 1?

9 A. Yes.

10 MR. ORME: Perhaps I misunderstood the
11 question. Can you please read back the question?

12 (Record read)

13 MR. ORME: Objection withdrawn to that
14 question.

15 MR. DOWDY: And then I'm not -- we've got the
16 answer on the record. We can move forward.

17 MR. ORME: Sorry about that. I was just
18 trying to clarify that.

19 MR. DOWDY: No, no, I appreciate that very
20 much. I hope it didn't come off as sort of rude. I
21 just didn't want to be confused about what topic you're
22 contending he could testify to. On what rather -- what
23 topics he was being designated as to. I realize we
24 agree with respect to the import of that.

25 Q. (BY MR. DOWDY): Okay. I want to move back

1 to what we were talking about, the Rhino Rack Mark
2 itself. Do you know how or why -- well, strike the
3 question.

4 Do you know why Rapid Rack chose the Rhino Rack
5 Mark?

6 MR. ORME: Objection; outside the scope of
7 topics.

8 A. No, I have no personal knowledge of that.

9 Q. (BY MR. DOWDY): Do you know how Rapid Rack
10 devised the Rhino Rack Mark?

11 MR. ORME: Same objection.

12 THE WITNESS: Same response. I have no
13 personal knowledge of that.

14 Q. (BY MR. DOWDY): Do you know whether there
15 have been any studies done showing public recognition
16 of the mark?

17 MR. ORME: Objection.

18 MR. DOWDY: Of the Rhino Rack Mark?

19 MR. ORME: Sorry Joe. It was actually
20 outside the scope.

21 THE WITNESS: No, I would have no personal
22 knowledge of that.

23 Q. (BY MR. DOWDY): Do you know how Rapid Rack
24 decides when it's going to use the Rhino Rack Mark as
25 opposed to when it's going to use the Gorilla Rack

1 Mark?

2 MR. ORME: Objection; beyond the scope of
3 topics.

4 THE WITNESS: No, no personal knowledge of
5 that.

6 Q. (BY MR. DOWDY): Do you know whether
7 consumers generally associate the Rhino Rack Mark with
8 Rapid Rack?

9 MR. ORME: Objection; beyond the scope, calls
10 for speculation.

11 THE WITNESS: I would have no personal
12 knowledge of that.

13 Q. (BY MR. DOWDY): Do you know whether the
14 Rhino Rack Mark has acquired public acceptance and is
15 recognized by the public as being associated with
16 higher quality hardware products?

17 MR. ORME: Objection; compound, beyond the
18 scope, calls for speculation.

19 THE WITNESS: No, I have no personal
20 knowledge of that.

21 Q. (BY MR. DOWDY): I may turn now to, Madam
22 Court Reporter, if you would take out the envelope
23 that's marked Interrogatory Responses, if we could mark
24 that as an exhibit.

25 THE COURT REPORTER: That will be Exhibit 5.

1 (Exhibit No. 5 marked.)

2 MR. DOWDY: Let's designate this exhibit also
3 needs to be sealed, Madam Court Reporter, and I presume
4 Mr. Orme is going ask to be AOE.

5 MR. ORME: AEO, Attorneys eyes only.

6 MR. DOWDY: I never use the shorthand. I'm
7 not good at that.

8 Am I correct that is the designation you're
9 requesting Mr. Orme?

10 MR. ORME: Yes, with respect to those topics
11 that are so designated within the answers or responses
12 rather.

13 MR. DOWDY: Absolutely. Is that the same
14 thing you were saying with respect to the documents?

15 MR. ORME: Yeah, that's correct.

16 MR. DOWDY: Documents, okay. I understand.

17 MR. ORME: Just I want to designate attorneys
18 eyes only only the portion of the deposition that deals
19 with the documents that have been so designated under
20 the TTAB's rules as I believe with trade secret
21 commercially sensitive, I believe is their designation
22 for attorneys eyes only.

23 MR. DOWDY: Okay. I understand.

24 MR. ORME: I figured you did. I just wanted
25 to clarify. It's not encompassing everything.

1 MR. DOWDY: I might have blanked earlier. I
2 just wanted to make sure we were saying the same thing
3 with respect to the the exhibits concerning documents
4 and the exhibit concerning interrogatories.

5 MR. ORME: The designation is trade secret
6 commercially sensitive.

7 MR. DOWDY: Nonetheless, Madam Court
8 Reporter, I would ask you be very careful with this
9 document and not disclose it generally to -- that you
10 not disclose this to members of the public, that we
11 keep it sealed and confidential.

12 (THE FOLLOWING TESTIMONY IS SEALED FOR
13 ATTORNEYS' EYES ONLY.)

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Deposition pages 75 to 83 are submitted under seal.

1 MR. DOWDY: Madam Court Reporter, will you
2 open and mark Responses to Request for Admissions as
3 the next exhibit.

4 THE COURT REPORTER: That will be Exhibit 6.
5 (Exhibit No. 6 marked.)

6 Q. (BY MR. DOWDY) Mr. Taylor, let me ask you:
7 Do you know what resources Rapid Rack's customers use
8 to find information about Rapid Rack's products?

9 MR. ORME: Objection; vague, calls for
10 speculation.

11 THE WITNESS: Could you define which product?

12 MR. DOWDY: Any products at all.

13 MR. ORME: Same objection.

14 THE WITNESS: No, I do not.

15 Q. (BY MR. DOWDY): Do you know if they use
16 anything other than the internet?

17 MR. ORME: Same objection.

18 THE WITNESS: No, I do not.

19 Q. (BY MR. DOWDY): If you can turn to Request
20 For Admission No. 3 on page two. This is Exhibit No.
21 6; correct?

22 MR. ORME: Yes, it's Exhibit 6.

23 Q. (BY MR. DOWDY): Are you there, sir?

24 A. Yes, I'm on page three.

25 Q. Request For Admission No. 3 says, "Registrant

1 cannot produce and documentary or demonstrative
2 evidence or proof of use of Registrant's Mark in
3 calendar year 2000; do you see that?

4 MR. ORME: You just said Request For
5 Admission No. 3 on page three?

6 MR. DOWDY: On page two.

7 MR. ORME: I'm sorry. I believe you referred
8 to it as No. 3 Go ahead again.

9 MR. DOWDY: I'm looking for Request for
10 Admission No. 3 on page two. It says, Registrant
11 cannot produce any documentary or demonstrative
12 evidence or proof of use of Registrant's Mark in
13 calendar year 2000."

14 MR. ORME: Objection; outside the scope of
15 his designated testimony."

16 Q. (BY MR. DOWDY): Okay. You see that in
17 Response to Request For Admission No. 3 there's an
18 objection. Then the second sentence says,
19 "Notwithstanding the above objections and without
20 waiver thereof, Registrant denies this request." Do
21 you see that, sir?

22 A. No, I do not.

23 Q. I'm looking under Response to Request For
24 Admission No. 3.

25 A. Hold on.

1 Q. I'm looking at the second sentence.

2 A. Yes, I do.

3 Q. "What documentary or demonstrative evidence
4 or proof of use does Rapid Rack have of use of
5 Registrant's Mark in calendar year 2000"?

6 A. I have no personal knowledge of that.

7 Q. Now, I'm on page three, Patrick, and I'm
8 looking for Request For Admission No. 8?

9 A. Excuse me. Maybe I misunderstood the
10 question. Could you repeat the last question, please?

11 MR. DOWDY: Could you read the question back,
12 Madam Court Reporter?

13 (Record read)

14 Q. (BY MR. DOWDY): I said, "What documentary or
15 demonstrative evidence or proof of use of Registrant's
16 Mark does Rapid Rack have for calendar year 2000"?

17 A. The only thing I'm aware of are the screen
18 prints I did off the computer system last night for the
19 RR-4805s.

20 Q. That's all you're aware of?

21 A. That's all I am actually aware of. That I'm
22 personally aware of at this time.

23 MR. DOWDY: Patrick, are those what were
24 produced to us last night at approximately 10 o'clock
25 our time? I'm sorry. Are these what was produced to

1 us, actually during this deposition, I got an e-mail
2 from Stacy, and I forgot her last name. Is that what
3 you're talking about?

4 MR. ORME: That's correct. I believe that's
5 what he's talking about. You'd have to ask him
6 specifically as to what you're looking at and then I
7 have copies of what was sent to you this morning.

8 MR. DOWDY: Okay. Do you have copies in
9 there?

10 MR. ORME: Yes, I do.

11 MR. DOWDY: Could we put that in front of the
12 witness and mark them?

13 MR. ORME: Yeah, that's fine.

14 (Exhibit No. 7 marked.)

15 MR. DOWDY: Have they been marked and they're
16 in front of the witness?

17 THE COURT REPORTER: Yes.

18 Q. (BY MR. DOWDY): Do you have Exhibit No. 7 in
19 front of you, Mr. Taylor?

20 A. Yes, I do.

21 Q. Is this what you were just testifying to?

22 A. Yes.

23 Q. This is. Now with respect to Request For
24 Admission No. 8 on page -- begins on the very bottom of
25 page three. "Registrant cannot produce any documentary

1 or demonstrative evidence or proof of use of
2 Registrant's Mark in 2001." You see that, sir?

3 A. Yes, I do.

4 Q. You see under Response to Request For
5 Admission No.8 if you look at the second sentence very
6 last bit there it says, "Registrant denies the
7 request." Do you see that, sir?

8 A. Yes, I do.

9 Q. What documentary or demonstrative evidence or
10 proof of use of Registrant's Mark does Rapid Rack have
11 for calendar year 2001?

12 MR. ORME: Objection; Responses to Request
13 for Admissions are outside the scope of his designated
14 topics.

15 MR. DOWDY: You can answer the question.

16 THE WITNESS: The only personal knowledge I
17 have are the screen prints that I printed out last
18 night for the RR-4805.

19 Q. (BY MR. DOWDY): That's the Exhibit 7 we
20 looked at a moment ago?

21 A. That is correct.

22 Q. If you'll look with me for Request for
23 Admission No. 13 and it says, "Registrant cannot
24 produce any documentary or demonstrative evidence or
25 proof of use of Registrant's Mark in calendar year

1 2002. Do you see that, sir?

2 A. Yes, I do.

3 Q. And you see in Response to Request For
4 Admission No. 13 at the very end, it says, "Registrant
5 denies this request"?

6 A. Yes, I do.

7 Q. What documentary or demonstrative evidence or
8 proof of use of Registrant's Mark does Rapid Rack have
9 for calendar year 2002?

10 MR. ORME: Objection; outside the scope.

11 THE WITNESS: Again, the printout that I
12 personally made last night for the RR-4805s.

13 Q. (BY MR. DOWDY): Is that the same answer you
14 would give, sir, with respect to years 2003 through
15 2006?

16 A. No, it is not.

17 MR. ORME: Objection; vague, there were
18 multiple questions in this.

19 Q. (BY MR. DOWDY): Turn to Request For
20 Admission 18, Please?

21 A. And as on page seven it says, Registrant
22 cannot produce any documentary or demonstrative
23 evidence or proof of use of Registrant's Mark for
24 calendar year 2003. Do you see that, sir.

25 MR. ORME: I'm sorry. I didn't hear. You

1 actually cut out a little there.

2 MR. ORME: Go ahead. Would you repeat that,
3 please Jeff.

4 MR. DOWDY: I read Request For Admission No.
5 18.

6 MR. ORME: Gotcha.

7 Q. (BY MR. DOWDY): Do you see Request For
8 Admission No. 18, Mr. Taylor?

9 A. Yes, I do.

10 Q. Do you see where registrant has denied that
11 question?

12 A. Yes, I do.

13 Q. What documentary or demonstrative evidence or
14 proof of use of Registrant's Mark does Rapid Rack have
15 for calendar year 2003?

16 MR. ORME: Objection; outside the scope.

17 THE WITNESS: The printout that. I printed
18 last night for the RR-4805.

19 Q. That's Exhibit No. 7 we've discussed?

20 A. That is correct.

21 Q. If you'll turn to page eight a Request For
22 Admission No. 23 asks the same thing about calendar
23 year 2004. Do you see that Registrant has denied that
24 request?

25 A. Yes, I do.

1 Q. What documentary or demonstrative evidence or
2 proof of use of Registrant's Mark does Rapid Rack have
3 for calendar year 2004?

4 MR. ORME: Objection; outside scope of
5 designated testimony.

6 THE WITNESS: I have no personal knowledge of
7 that.

8 Q. (BY MR. DOWDY): So there's nothing you're
9 aware of, sir?

10 MR. ORME: Objection, same objection.

11 THE WITNESS: Not personally.

12 Q. (BY MR. DOWDY): With respect -- I'm looking
13 now at Request for Admission No. 28 on page ten that
14 concerns the same thing for calendar year 2005.

15 You see that Registrant has denied that request.

16 A. Yes, I do.

17 Q. What documentary or demonstrative evidence or
18 proof of use of Registrant's Mark does Rapid Rack have
19 for calendar year 2005?

20 MR. ORME: Same objections.

21 A. I have no personal knowledge of that.

22 Q. You're not aware of anything?

23 A. Personally, no, I am not.

24 Q. Let's look at Request For Admission No. 3
25 that asks for an admission as to year 2006 of the same

1 scope we've just discussed and you see that Registrant
2 has denied that request also?

3 MR. ORME: Same objection.

4 THE WITNESS: Yes, I do, I see it.

5 Q. (BY MR. DOWDY): What documentary or
6 demonstrative evidence or proof of use of Registrant's
7 Mark does Rapid Rack have for calendar year 2006?

8 MR. ORME: Same objection.

9 THE WITNESS: I have no personal knowledge of
10 that.

11 Q. You're not aware of anything?

12 A. Personally no.

13 Q. Let me ask you this: What documentary or
14 demonstrative evidence or proof of use of Registrant's
15 Mark does Rapid Rack have for calendar year 2007?

16 MR. ORME: Objection beyond the scope.

17 Q. (BY MR. DOWDY): You can answer.

18 THE WITNESS: I have no personal knowledge of
19 that.

20 Q. (BY MR. DOWDY): You're not aware of
21 anything?

22 A. No, I am not personally aware of it.

23 MR. DOWDY: Can you give me -- like can we
24 take a quick 60-second stretch break and go off the
25 record for 60, 120 seconds, something like that.

1 MR. ORME: Sure. Off the record.

2 (Off the record.)

3 Q. (BY MR. DOWDY): Mr. Taylor, I want to thank
4 you for appearing today on behalf of Rapid Rack and
5 that concludes our 30(b)(6) deposition of Rapid Rack
6 Industries. That's all the questions I have.

7 A. All right. Thank you very much.

8 MR. DOWDY: Stipulate the Rules of the TTAB
9 apply unless there's a general objection, the objection
10 for anything except form is preserved.

11 MR. DOWDY: Off the record.

12 (Discussion regarding signature of the
13 original transcript held off the record.)

14 MR. DOWDY: He can waive or sign it.

15 MR. ORME: It's not going to be waived. We
16 request to review the transcript and make corrections
17 as necessary. We would also note for the record, the
18 standard be TTAB protective order requires a
19 nondisclosure agreement which has not been signed by
20 the court reporter as was the duty of opposing counsel
21 today. I would trust you're going to take care of
22 that, Joe.

23 MR. DOWDY: I will take care. Ma'am, please,
24 we'll be sending a standard protective order and an
25 agreement that you wouldn't disclose. In the meantime,

1 would you kindly confirm that you won't share any of
2 the exhibits or any of the deposition transcripts with
3 anyone than the parties in this litigation?

4 THE COURT REPORTER: Yes. I will not.

5 MR. DOWDY: My understanding is the original
6 transcript comes to us and there's an errata. You get
7 a copy and then you have an errata statement. You have
8 an errata and it comes to us.

9 MR. ORME: In California that's not how it
10 goes. The original goes to the folks who actually have
11 their deposition taken. We review that and then
12 forward the original and an errata sheet.

13 MR. DOWDY: How long does that take?

14 MR. ORME: I believe we have 30 days, so I
15 think from 30 days from the time we actually receive
16 the transcript and -- to provide an errata sheet and
17 the original.

18 MR. DOWDY: Well, let's, Madam Court
19 Reporter, can we get back with you on that? I suppose
20 I'd like to talk to counsel off line about that and
21 sort of see which rules apply. I don't want to
22 accidentally anger the TTAB and fail to follow their
23 rules. We could talk off line.

24 THE COURT REPORTER: In California the Code
25 is the witness has to come to the reporter's office to

1 sign the transcript, but the parties can stipulate to
2 send the original to the witness for signature.

3 MR. ORME: For the record, the deposition is
4 occurring in California and we're operating under the
5 rules of the Central District of California.

6 (Discussion regarding signature of the original
7 transcript held off the record.)

8 MR. ORME: I would like to reach a
9 stipulation. Why don't we take a 15-minute break, Joe,
10 while you review the rules.

11 MR. DOWDY: That's okay. We don't stipulate.
12 We want him to come to her office. I want him to come
13 review the deposition in your office.

14 MR. ORME: We're going to go off the record
15 for a few minutes. We'll be right back.

16 (Off the record.)

17 MR. DOWDY: Let me apologize. I
18 misunderstood something the court reporter said. We'll
19 stipulate to -- we'll make a standard stipulation of
20 the Central District.

21 MR. ORME: The original will come to us.
22 We'll -- the witness will review, provide an errata
23 sheet and then we will forward the original to you.

24 MR. DOWDY: Right, right, right. We
25 stipulate that the errata sheet could be made within 30

1 days, other than that we do stipulate. I assume you
2 stipulate to that as well?

3 MR. ORME: 30 days?

4 MR. DOWDY: Yeah.

5 MR. ORME: Yes, we stipulate to 30 days to
6 reply with the errata sheet.

7 THE COURT REPORTER: Do you still need the
8 rough?

9

10 MR. DOWDY: Yes, we'll take the rough. We're
11 off the record.

12 MR. ORME: The court reporter is taking the
13 exhibits, correct? Her copy of the exhibits?

14 MR. DOWDY: Yes.

15 MR. ORME: I just want to be clear on that.
16 Thank you.

17 (The deposition was concluded at 11:50 A.M.)

18 (Penalty of Perjury Declaration on the following page.)

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