

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CASPER SLEEP INC.,
Petitioner,

v.

WERNER MEDIA PARTNERS, LLC,
Patent Owner.

IPR2024-00474
Patent 10,842,301 B2

Before BARRY L. GROSSMAN, JASON W. MELVIN, and
RYAN H. FLAX, *Administrative Patent Judges*.

FLAX, *Administrative Patent Judge*.

ORDER

*Denying Patent Owner's Unopposed Motion
for Extension of Time
37 U.S.C. §§ 42.5, 42.20*

Werner Media Partners LLC (“Patent Owner”) is the owner of U.S. Patent 10,842,301 B2 (Ex. 1001, “the ’301 patent”). Paper 5, 1. On January 18, 2024, Casper Sleep Inc. (“Petitioner”) filed a Petition for *inter partes* review challenging the patentability of claims 1 and 2 of the ’301 patent (all claims). Paper 2, 1 (“Pet.”). On April 26, 2024, trial was instituted in this proceeding. Paper 7.

Patent Owner filed an unopposed Motion for Extension of Time for Due Date 1, which also requests global changes to the entire schedule. Paper 9 (“Motion” or “Mot.”). Patent Owner requests a 3-month extension of Due Date 1, currently set for July 19, 2024 (*see* Scheduling Order, Paper 8, at 12), which would change Due Date 1 to October 21, 2024. Mot. 1. Patent Owner further requests that all other deadlines in this proceeding be extended by 3 months, respectively. *Id.* at 2. Patent Owner states that the reason necessitating these changes is its need for additional time to prepare its Response, to consult with its (new) expert witnesses, and to gather evidence concerning objective indicia of non-obviousness (aka, secondary considerations). *Id.* at 1.

Patent Owner has not established good cause to modify the schedule as proposed and, so, the Motion is *denied*, without prejudice.

We requested a conference call with the parties to discuss the Motion and this conference was held on June 28, 2024. It was attended by the Panel and counsel for both parties.

At the conference call, Patent Owner explained its need to amend the schedule, stating that it had just recently procured expert witnesses, from whom it intends to present testimony evidence in this proceeding. Patent

Owner also stated that it intends to collect evidence concerning objective indicia of non-obviousness.

We explained that the parties' agreed-to changes to the schedule are not reasonable on the current record. For example, so changing the schedule would move the final hearing date to April 24, 2025, which would be just days prior to our 1-year statutory deadline to enter a final decision in this case (i.e., April 26, 2025). *See* 35 U.S.C. § 316(a)(11). We also highlighted that the parties may stipulate to certain changes to the schedule per the Scheduling Order, but that any stipulated changes to the schedule must be reasonable and consider other due dates, in particular, the date of the final hearing, which is unlikely to change. Paper 8, 9–10.

We explained to the parties that we deny the Motion for these reasons, but instructed them to meet and confer to work out *reasonable* changes to the schedule as needed. If the parties stipulate to changes, they are to file a related Notice of such stipulated changes with the Board. If further input from the Panel is required on this matter, the parties may request it.

There are a few other issues worth mentioning at this point.

In its Motion, Patent Owner cites to 37 C.F.R. § 1.956 and also states, “Patent Owner will submit the petition fee set forth in [37 C.F.R.] § 1.17(g).” Mot. 2. These sections of the Office's rules do not relate to trials under the America Invents Act (AIA), i.e., IPRs and PGRs. There is no petition or fee associated with schedule changes in an IPR. We direct the parties to 37 C.F.R., Part 42, which most directly addresses the rules for AIA “Trial Practice and Procedure.” Please also see 35 U.S.C. §§ 311–318, which most directly address IPRs, and the Board's Consolidated Trial

Practice Guide,¹ 84 Fed. Reg. 64,280 (Nov. 21, 2019), which is an important resource explaining most Board trial procedures. Intimate familiarity with these resources is suggested.

Also, by necessity, we cite here to Patent Owner's Motion's page numbers by counting the pages because they are unnumbered. The parties should number the pages of all documents filed with the Board. Further, as we noted in the first footnote of our Institution Decision (Paper 7), we expect all evidence submitted as a PDF to be OCR'd and have electronically recognizable text, which can be searched and copied. Exhibits should be cited by exhibit number rather than some other name. It is also preferred that, when filing evidentiary exhibits, they are given a short, descriptive name in addition to the number. In addition to page numbering, all witness testimony in declarations should include paragraph numbering. Submissions not meeting these expectations may be refused.

Moreover, upon analyzing the Motion, we found that the PDF could not be annotated (e.g., text highlighted or comments added) using Adobe Acrobat Pro, although there did not appear to be any security restrictions set that would cause this. In future filings, the parties should endeavor to ensure that the PDF may be annotated using Acrobat Pro.

Therefore, it is

ORDERED that Patent Owner's Motion is *denied*, without prejudice.

¹ It can be found at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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For PETITIONER:

Mark I. Koffsky
Gary Serbin
KOFFSKY SCHWALB LLC
mkoffsky@koffskyschwalb.com
gserbin@koffskyschwalb.com

For PATENT OWNER:

Greg M. Popowitz
ASSOULINE & BERLOWE, P.A.
gmp@assoulineberlowe.com

Loren D. Pearson
LOREN DONALD PEARSON, P.A.
ldp@pearsonip.com