

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Casper Sleep Inc.,
Petitioner,

v.

Werner Media Partners, LLC,
Patent Owner.

U.S. Patent 10,842,301
IPR 2024-00474

**PETITIONER'S OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Casper Sleep Inc. (“Petitioner”) provides the following objections to the Patent Owner Response (“POR”) filed by Werner Media Partners, LLC (“Patent Owner”) on August 23, 2024. Petitioner reserves the right to present further objections as allowed by the applicable rules or other authority.

Patent Owner Response

Page 45 of the POR states: “Starting in 2024, Petitioner revised their mattress models in an attempt to design around the process protected by the ‘301 Patent.” Without opining on the truthfulness of this statement, Petitioner objects to the inclusion of this statement in the POR as a violation of at least FRE 408, the settlement privilege, and/or the mediation privilege.

Exhibit 2001 (Declaration of Andrew Gross)

Exhibit 2001 is inadmissible for at least the following reasons:

- FRE 702/703 (opinions are not sufficiently reliable at least because Mr. Gross fails to set forth sufficient facts underlying his opinions, including without limitation using speculative terms such as “may,” “could,” “assuming,” and “likely”);

- FRE 106; FRE 602; FRE 702/703; FRE 801/802/805; FRE 901; FRE 1001/1002 (declaration relies on Exhibit 2009, which is objected to for the reasons set forth herein).

Exhibit 2009 (Foam Equipment, by Wayne Bowman (Video Presentation to Polyurethane Foam Association), <https://www.youtube.com/watch?v=5XThFsqqUvU&t=4s>)

Exhibit 2009 (which was not provided with the POR) is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 702/703 (failure to provide underlying data and documentation);
- FRE 801/802/805 (hearsay, and hearsay within hearsay (the alleged video appears to be a presentation by Dimitri Dounis, and not by Wayne Bowman));
- FRE 901 (lack of authentication);
- FRE 1002/1003 (lack of original or duplicate recording).

Exhibit 2013 (Declaration of Jeff Quinn)

Exhibit 2013 is inadmissible for at least the following reasons:

- FRE 702/703 (opinions are not sufficiently reliable because Mr. Quinn fails to set forth sufficient facts underlying his opinions, including without limitation using speculative terms such as “likely”);
- FRE 106; FRE 602; FRE 702/703; FRE 801/802/805; FRE 901; 37 C.F.R. § 42.65(b) (declaration relies on Exhibits 2015, 2016, and 2017, which are objected to for the reasons set forth herein).

Exhibit 2015 (Jeff Quinn Presentation of Secondary Considerations)

Exhibit 2015 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data, including without limitation reliance on data from the survey in Exhibit 2016);
- FRE 702/703 (failure to disclose underlying data and documentation, including without limitation failure to disclose all communications, data, and analysis related to Exhibit 2015);
- FRE 801/802/805 (hearsay, and hearsay within hearsay (¶ 36 of the Quinn declaration states that market survey analysis was conducted by “Patent Owner”));
- FRE 901 (lack of authentication).

In addition, Exhibit 2015 is inadmissible because this Exhibit relies on one or more technical tests or data from such tests without an affidavit that meets the requirements of 37 C.F.R. § 42.65(b).

Exhibit 2016 (Market Survey Summary of Results Data)

Exhibit 2016 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 702/703 (failure to disclose underlying data and documentation, including without limitation failure to disclose all communications, data, and analysis related to Exhibit 2016);
- FRE 801/802/805 (hearsay, and hearsay within hearsay (¶ 47 of the Quinn declaration implies that Mr. Quinn did not conduct the testing analysis));
- FRE 901 (lack of authentication).

In addition, Exhibit 2016 is inadmissible because this Exhibit relies on one or more technical tests or data from such tests without an affidavit that meets the requirements of 37 C.F.R. § 42.65(b).

Exhibit 2017 (Element Materials Technology, Test Results)

Exhibit 2017 is inadmissible for at least the following reasons:

- FRE 106 (lack of related statements);
- FRE 602 (lack of foundation as to underlying source of alleged data);
- FRE 702/703 (failure to provide underlying data, documentation, and things, including without limitation: (a) failure to disclose underlying data and documentation, including without limitation failure to disclose all communications, data, and analysis related to Exhibit 2017; and (b) failure to provide Petitioner with: (i) the actual physical samples tested by Element Materials Technology so that Petitioner may conduct its own tests on such samples; and (ii) physical samples identical to those tested by Element Materials Technology so that Petitioner may conduct its own tests on such samples);
- FRE 801/802 (hearsay);
- FRE 901 (lack of authentication);

In addition, Exhibit 2017 is inadmissible because this Exhibit relies on one or more technical tests or data from such tests without an affidavit that meets the requirements of 37 C.F.R. § 42.65(b).

Respectfully submitted,

Dated: August 30, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e), service was made on Patent Owner as detailed below.

Date of Service August 30, 2024

Manner of Service Email to patent@assoulineberlowe.com and contact@pearsonip.com

Document Served This Petitioner's Objections to Evidence Under 37 C.F.R. § 42.64(b)(1)

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