

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CASPER SLEEP INC.,
Petitioner,

v.

WERNER MEDIA PARTNERS, LLC,
Patent Owner.

IPR 2024-00474
Patent 10,842,301 B2

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

FLAX, *Administrative Patent Judge*

PATENT OWNER'S RESPONSE TO PETITIONER'S
OBJECTIONS PURSUANT TO 37 C.F.R. 42.64(b)(2)

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(2), Werner Media Partners, LLC (“Patent Owner”) responds to Petitioner’s September 24, 2024 objections to Patent Owner’s Exhibit 2019.

Exhibit 2019

Petitioner’s FRE 106 objection for an alleged lack of related statements should be overruled. This generalized objection lacks any reasonable particularity and does not allow Patent Owner to meaningfully respond and correct. The objection fails to identify the alleged “any other part (of a writing or recorded statement) —or any other writing or recorded statement” that is allegedly lacking. Patent Owner did not cite to Exhibit 2019 in Patent Owner’s Response. In response to discovery requests, Patent Owner provided Exhibit 2019 to Petitioner as a guide to show how Patent Owner’s expert Jeff Quinn used Jungle Scout as a part of Mr. Quinn’s analysis. Patent Owner advised Petitioner that Petitioner can question Mr. Quinn about his process during Mr. Quinn’s deposition, presently scheduled for November 4, 2024.

Petitioner’s FRE 602 objection for an alleged lack of foundation should be overruled. The objection lacks any reasonable particularity and does not allow Patent Owner to meaningfully respond. Patent Owner provided Exhibit 2019 as a guide to show what Patent Owner’s expert Jeff Quinn did as a part of Mr. Quinn’s analysis.

Patent Owner advised Petitioner that Petitioner can question Mr. Quinn about his process during Mr. Quinn's deposition which is scheduled for November 4, 2024.

Petitioner's objection under FRE 702/703 should be overruled. Mr. Quinn's opinions are reliable under the gatekeeping framework established by the Supreme Court in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). Patent Owner did not cite to Exhibit 2019 in its Response. Exhibit 2019 was provided as a guide to show what Patent Owner's expert Jeff Quinn did as a part of his analysis. Patent Owner advised Petitioner that Petitioner can question Mr. Quinn about his process during Mr. Quinn's deposition which is scheduled for November 4, 2024.

Petitioner's objection under FRE 801/802 should be overruled. This generalized objection lacks any reasonable particularity and does not allow Patent Owner to meaningfully respond and correct. Exhibit 2019 was provided as a guide to show what Patent Owner's expert Jeff Quinn did as a part of his analysis based on Mr. Quinn's personal knowledge and is not hearsay. Patent Owner advised Petitioner that Petitioner can question Mr. Quinn about his process during Mr. Quinn's deposition which is scheduled for November 4, 2024.

Petitioner's objection under FRE 901 for an alleged lack of authentication should be overruled for lacking particularity that would allow Patent Owner to meaningfully respond and correct. Patent Owner did not cite to Exhibit 2019 in

Patent Owner's Response. Exhibit 2019 was provided to Petitioner, in response to a discovery request, as a guide to show how Patent Owner's expert Jeff Quinn used Jungle Scout as part of his analysis. Patent Owner advised Petitioner that Petitioner can question Mr. Quinn about his process during Mr. Quinn's deposition which is scheduled for November 4, 2024. Petitioner can address authentication of Exhibit 2019 by Mr. Quinn during the deposition to establish that Exhibit 2019 is what Patent Owner claims it is under FRE 901(a).

Petitioner's objection under FRE 1002/1003 concerning the lack of an original should be overruled. Exhibit 2019 was provided as a guide to show what Patent Owner's expert Jeff Quinn did as a part of Mr. Quinn's analysis. Patent Owner did not cite to Exhibit 2019 in Patent Owner's Response. Patent Owner advised Petitioner that Petitioner can question Mr. Quinn about his process and the Jungle Scout data used by Mr. Quinn during Mr. Quinn's deposition which is scheduled for November 4, 2024.

Petitioner's objection under 37 C.F.R. § 42.65(b) should be overruled. This generalized objection lacks any reasonable particularity and does not allow Patent Owner to meaningfully respond and correct if necessary. Patent Owner provided Exhibit 2019 as a guide to show what Patent Owner's expert Jeff Quinn did as a part of his analysis. Mr. Quinn's deposition is scheduled for November 4, 2024 and Patent

Owner advised Petitioner that Petitioner can question Mr. Quinn about his process during Mr. Quinn's deposition including under § 42.65(b)(1)-(5).

/s Greg M. Popowitz
Greg M. Popowitz

October 1, 2024

Respectfully submitted,

Lead Counsel

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