

From: [Trials](#)
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Cc: [Trials](#)
Subject: RE: IPR2024-00474 / Petitioner Seeking Permission to File a Motion to Strike
Date: Tuesday, December 10, 2024 3:03:08 PM

Counsel,

In response to Petitioner's email of December 9, 2024, requesting authorization to file a motion to strike regarding portions of Patent Owner's Sur-reply relying on allegedly improperly filed evidence, we authorize such a motion, of no more than 5 pages, to be filed by December 17, 2024. We also authorize Patent Owner to file an opposition to said motion, also limited to 5 pages, no later than December 23, 2024. No other briefing or evidence is authorized.

We remind the parties that requests to the Board, such as in Petitioner's above-noted email, may not contain substantive argument and, unless otherwise authorized, may not include attachments. *See* the Board's Consolidated Trial Practice guide at 9–10.

Regards,

Franchesca I. Alicea Villanueva
Supervisory Paralegal
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Mark Koffsky <mkoffsky@koffskyschwalb.com>
Sent: Monday, December 9, 2024 4:21 PM
To: Trials <Trials@USPTO.GOV>
Cc: gserbin@koffskyschwalb.com; [Wais Ali \(wais@cotmanlaw.com\)](mailto:wais@cotmanlaw.com) <wais@cotmanlaw.com>; Ed Schewe <ed@cotmanlaw.com>; Greg M. Popowitz <gmp@assoulineberlowe.com>; contact@pearsonip.com; Eric N. Assouline <ENA@AssoulineBerlowe.com>
Subject: IPR2024-00474 / Petitioner Seeking Permission to File a Motion to Strike

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Your Honors:

We represent Petitioner Casper Sleep Inc. in the above referenced proceeding.

Ex. 3001
IPR2024-00474

On December 6, 2024, Patent Owner Werner Media Partners, LLC, filed its Sur-Reply to Petitioner's Reply ("POSR") (Paper 31). The POSR was accompanied by the transcript of the cross-examination of Petitioner's expert David Shiroff (Exhibit 2029), along with 16 additional Exhibits 2030-2045 ("Additional POSR Exhibits"). The Additional POSR Exhibits included: (i) second declarations from Patent Owner's experts Andrew Gross and Jeff Quinn (each of whom filed declarations with Patent Owner's Response); (ii) four declarations/affidavits from newly-appearing witnesses; and (iii) ten other new documents.

The Additional POSR Exhibits (and the portions of the POSR relying on the Additional POSR Exhibits) violate 37 C.F.R. § 42.23(b), which provides:

A sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.

See Patent Trial and Appeal Board Consolidated Trial Practice Guide 73–74 (Nov. 20, 2019); Products, Inc. v. Seoul Semiconductor Co. Ltd., IPR2020-00836, Paper No. 45, at 75-77 (October 22, 2021); *Lenovo Holding Company, Inc. et al. v. Dodots Licensing Solutions LLC*, IPR2019-01278, Paper No. 37, at 31-33; *Clearone, Inc. v. Shure Acquisition Holdings, Inc.*, IPR2019-00683, Paper No. 66.

Accordingly, pursuant to 37 C.F.R. § 42.20(b), Petitioner respectfully requests authorization from the Board to file a Motion to Strike the Additional POSR Exhibits and the portions of the POSR relying on the Additional POSR Exhibits.

Petitioner has conferred with counsel for Patent Owner, who opposes this request.

Petitioner further requests the Board hold a conference call to discuss this request at the Board's earliest convenience. Counsel for the parties are available at the following times (all times EST):

- Thursday, December 12, 2024, from 3 pm to 5 pm; and
- Friday, December 13, 2024, from 9 am to 1 pm.

Petitioner will arrange for a court reporter to attend and transcribe the call.

Respectfully submitted,
Mark I. Koffsky
Gary Serbin
Counsel for Petitioner

cc: All counsel for Patent Owner

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